



ORIGINAL

NEW APPLICATION

Arizona Department of Transportation
Intermodal Transportation Division

206 South Seventeenth Avenue Phoenix, Arizona 85007-3213



0000114618

Janice K. Brewer
Governor

John S. Halikowski
Director

Arizona Corporation Commission

Floyd Roehrich Jr.
State Engineer

July 21, 2010 **DOCKETED**

JUL 22 2010

| | |
|-------------|----|
| DOCKETED BY | NR |
|-------------|----|

Arizona Corporation Commission
Office of Railroad Safety
Attn: Chris Watson
1200 W Washington Street
Phoenix, AZ 85007

RE: Application to widen existing public at-grade railroad crossing
Project: US 60 Widening, 99th Avenue to SR 303L
Federal Project # ARRA-060-B(201)A
ADOT Tracs # 060 MA 139 H6866 01C

Greenway Road DOT 025 651 J
111th Avenue DOT 025 397 J
107th Avenue DOT 025 398 R
103rd Avenue DOT 025 399 X
Burlington Northern Santa Fe Railway

RR-02635B-10-0305

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AZ CORP COMMISSION
DOCKET CONTROL

Mr. Watson,

This application is being submitted to allow the Burlington Northern Santa Fe Railway (BNSF) to modify and/or install additional railroad signals between the railroad and Grand Avenue as identified at each crossing. This will allow ADOT to modify the intersection adjacent to the crossing and bring all crossings up to current standards, including installation of LED flashers.

This work is part of ADOT project TRACS H6866 01C, which is widening the US 60/ Grand Avenue (Grand Ave) from SR 303 to 99th Avenue. This project is in construction and is being funded by the American Reinvestment and Recovery Act of 2009. This project was authorized by the Maricopa Association of Governments in 2009. This overall project also involves the widening at the BNSF Ennis Spur which is being covered by ACC Docket No. RR-02635B-10-0234 (DOT 025 700 D).

All 4 crossings have been installed/ modified in the past as part of the Railroad-Highway Safety Improvement program (Section 130). All 4 crossings are being modified by ADOT, and will then be turned back to the local road agency after our Grand Avenue widening project is complete. Greenway Road will be turned back to the city of Surprise, while the other 3 crossings will be turned back to Maricopa DOT.

A separate letter was sent to your office detailing the improvements that are part of this ADOT project and the adjacent US 60 widening project (83rd Avenue to 99th Avenue/ Docket RR-02635B-09-0529).

1. Project Location and Description

This overall road project will widen approximately 12 miles of US 60 between 99th avenue and SR 303L from 4 lanes to 6 lanes. The roadway widening project is in construction and is expected to be finished by winter 2011.

No work is being done where existing railroad signals are in the way until BNSF is allowed to move the signals. This project is funded by the American Recovery and Reinvestment Act of 2009. This project was selected for ARRA funding by the Maricopa Association of Government in consultation with ADOT.

For All crossings the ADOT contractor will be modifying the intersection between US 60 and the cross road to reduce congestion. None of the crossings are being widened at the railroad crossing and except for Greenway Road; none of the crossings are being shifted.

Greenway Road Crossing (DOT 025 651 J)

The Greenway Crossing is located in the upper 1/3 of the project. Work will consist of shifting the crossing approximately 5 feet to the west to provide a better alignment and separately installing sidewalks on both sides of the crossing. All of this work is in the City of Surprise, Arizona.

The BNSF work at the Crossing will consist of relocating existing gate/flasher unit and cantilevered flashing units and installing additional cantilevered and post mounted flashing light units. All flashing lights will be upgraded to LED bulbs. BNSF will also install additional crossing panels. ADOT's Contractor will then construct additional sidewalks on each side, and rebuild the median. BNSF will then install a post mounted flashing light and gate on the south median.

111th Avenue Crossing (DOT 025 397 J)

The 111th Avenue crossing is in the lower 1/3 of the project. Work will consist of BNSF relocating existing signal equipment between US 60 and the crossing to allow ADOT to redo the curb return.

107th Avenue Crossing (DOT 025 398 R)

The 107th avenue crossing is in the lower 1/3 of the project. Work will consist of BNSF relocating signals between the crossing and US 60, and installing 1 new cantilevered flashing light on the south side of the crossing and 1 new median installed flashing light on the north side of the crossing.

103rd Avenue Crossing (DOT 025 399 X)

The 103rd avenue crossing is in the lower 1/3 of the project. Work will consist of BNSF relocating flashing light and gate and installing new cantilevered flashing lights on the each side.

2. Why the crossing work is needed

The *Grand Avenue Northwest Corridor Study, SR 303L to SR 101L* (Maricopa Association of Governments, January 2003) identified US 60 as one of the primary urban arterial corridors serving Surprise, El Mirage, Youngtown, Maricopa County, Sun City and Sun City West. This same highway also links the Phoenix Metro area with US 93/ Las Vegas Nevada. The Corridor study found that without improvements this highway would be heavily congested by year 2025.

The study suggested Priority 1, 2, and 3 improvements to the US 60. The Priority 1 work consisted of widening the US 60 to 6 lanes. 2nd priority work would consist of transit projects. The 3rd priority called for intersection/ grade separation projects to be done at a future time.

The Maricopa Association of Governments (MAG) approved the study in 2003 and it was to be funded by Proposition 400 revenue. The Priority 1/ Phase 1 work would consist of widening US 60 to 6 lanes, while Priority 3/ Phase 2 would do the major interchange work. (Executive Summary Page I, US 60 Feasibility Report).

These crossings are on crossroads that intersects US 60, and intersection improvements are needed to handle the increased traffic volume and turning movements to/from US 60.

Per Page 11 of the 2007 Final Traffic Report, vehicle crash data is as follows based on 2002 to 2004 data. 93 % were vehicle-vehicle collisions, and of those, 68% were rear-end collisions

| <u>Road</u> | <u>Vehicle-vehicle accidents at intersection</u> |
|-----------------------|--|
| Greenway Rd | 44 |
| 111 th Ave | 21 |
| 107 th Ave | 19 |
| 103 rd Ave | 18 |

Review of FRA accidents showed the following incidents at the 4 crossings:

- a) Greenway Road: 3 accidents, including 2 with injuries and 1 fatality (Accidents in 2005, 2004 (1 injury) 2001 (1 fatal, 4 injured).
- b) 111th Avenue: 2 accidents total with no injuries or fatalities (1991, 1975)
- c) 107th avenue: 5 total with 1 injury (2 in 2004, 1 injury in 2000, 1 each in 1983, 1978)
- d) 103rd avenue: 10 accidents total with 2 involving injuries (2 in 2006, 1 in 2005, 3 in 2004 inc. drive around causing injury accident, 1 in 1999; 1980, 1979 and 1977.

Accident reports indicated that most of the accidents involved vehicles and/or carts stopped on the tracks, driving around gates or stopping then moving in front of the train.

3. Construction Phasing

The overall road project is in construction. BNSF has been authorized to install the new crossing surfaces. The ADOT Contractor has been notified that existing Railroad signals need to be protected in place.

Once an opinion and order is issued, BNSF will relocate the signal equipment within 6 months.

4. Maintenance of the crossing

BNSF will be responsible for installing and maintaining the crossing surface and signal equipment. ADOT will be responsible for constructing the road approaches outside of BNSF responsibility. After construction is complete, the crossings will be turned back to the local road authorities, and they will maintain the approaches.

5. Project Funding

100% of the funding will be provided thru the Federal Highway Administration thru the American Recovery and Reinvestment Act and is expected to be completed by June 2011.

Costs are as follows:

| | |
|----------------------|------------------|
| A) Greenway Crossing | |
| BNSF Signal Cost | \$280,757 |
| BNSF Surface Cost | <u>\$ 30,198</u> |
| Total Cost | \$310,955 |

| | |
|-----------------------------|-----------|
| B) 111 th Avenue | |
| i. Signal Cost | \$ 16,152 |

| | |
|-----------------------------|-----------|
| C) 107 th Avenue | |
| i. Signal Cost only | \$194,273 |

| | |
|-----------------------------|-----------|
| D) 103 rd avenue | |
| i. Signal Cost only | \$201,001 |

6. Other information (based on typical Staff Data Requests):

1. Provide Average Daily Traffic Counts for each of the locations.
Per US 60 Improvement Feasibility Report, Page 10 & 11

| | |
|--------------------------|--------------------------|
| <u>Road Name</u> | <u>2007 ADT</u> |
| Greenway Road | 696** Peak traffic only |
| 111 th Avenue | 1007** Peak traffic only |
| 107 th Ave | 18562 |
| 103 rd Ave | 8123 |

NOTE: Greenway and 111th avenue are peak traffic only. No full ADT info available for those 2 crossings

2. Please describe the current Level of Service (LOS) at each intersection

Per 2007 Final Traffic Report Page 35

| | |
|-----------------------|-----------------|
| <u>Intersection</u> | <u>2007 LOS</u> |
| Greenway Rd | D |
| 111 th Ave | D |
| 107 th Ave | C |
| 103 rd Ave | C |

3. Provide any traffic studies done by the road authorities for each area.

a) Final Design Concept Report US 60 Grand Avenue SR 303L to 99th Avenue, January 2007

b) Final Traffic Report Dated January 2007 for Final Design Concept Report

c) US 60 Improvements Feasibility Report (note, MAG has not formally adopted this study as of July 20, 2010). A copy of this report is included in electronic format to the ACC.

Other studies (no copies available):

- Regional Transportation Plan (Approved by MAG council in November 2003)
- Grand Avenue Northwest Corridor Study January 2003

4. Provide the population of the City the crossing is located in.

Greenway Road is in Surprise and has a population of 94,899 persons per the 2009 Census

111th, 107th, 103rd Ave are in Youngtown and has a population of 4,895 per the 2009 census.

5. Provide what warning devices are currently installed at the crossing.

- a) Greenway Road: Cantilevered flashing lights and gate/flashing light units on each side. No Median mounted warning devices.
- b) 111th Avenue: Road edge and median mounted gate/flashing light units each side.
- c) 107th Avenue: 1 gate/flashing unit and 1 post mounted flashing light unit South side of crossing; Road edge and median mounted gate/flashing light units on North side of crossing.
- d) 103rd avenue: 1 gate/flashing unit on each side of the road.

6. Provide distances in miles to the next public crossing on either side of the proposed project location. Are any of these grade separations?

There are no grade separated crossing of the BNSF in the project area.

a) Greenway Road Crossing

US 60 (DOT 025 700 D3) is at-grade and 0.6 miles Southeast of the crossing. Dysart Road (DOT 025 393 G) is at-grade and is 0.85 miles Northwest of the crossing.

b) 111th/107th/103rd avenue. The 3 crossings are next to each other.

99th avenue (DOT 025 400 P) is at-grade and located 0.57 miles Southeast of 103rd avenue.

Thompson Ranch Road (DOT 025 631 X) is at-grade and located .96 miles Northwest of 111th avenue.

7. How and why was grade separation not decided on at this time? Please provide any studies that were done to support these answers.

The Maricopa Association of Government (MAG) completed the Grand Avenue Northwest Corridor Study in 2003. It listed 3 priorities for Grand Avenue/ Highway US 60. The first priority was to widen Grand Avenue to 6 lanes, and for McDOT to prepare a study for extending El Mirage road at Grand Avenue.

The 2nd priority involved increased transit systems and the 3rd priority was to implement grade separation at key intersections to enhance the capacity of the corridor (page 5 of the Feasibility Report)

Project Tracs H6866 01C was designed to widen Highway US 60 and perform minimal cross road improvements as part of the 1st priority. Due to funding and project schedule issues, no grade separation projects were considered in the first phase of the US 60 corridor improvements. This Application covers work by this Project Tracs H6866 01C.

Project Tracs H7327 was created to evaluate further improvements to the Highway US 60 corridor from SR 303 to SR 101. The US 60 Improvements Feasibility Report (Feasibility Report) was developed from this project and includes potential grade separation of Bell Road from the BNSF, and 103rd avenue from the BNSF.

Any grade separation would also include separation from Highway US 60/ Grand Avenue and require a traffic interchange or other method to allow traffic access between Grand avenue and the cross road. The report identified alternatives and which grade separation projects to pursue and has been completed by ADOT and is awaiting approval by the Maricopa Association of Governments.

The Recommended alternatives are listed starting on Page 64 of the Feasibility Report and also on page III of the Executive Summary. A detailed summary of all the intersection improvements are listed on page 36 and 37 of the Feasibility Report. The cost of all the improvements exceeds the current budget, and further studies will be needed to determine when to construct the improvements.

This Report has identified the following priorities for grade separation and/or intersection improvements:

High priority projects as recommended in the study pending MAG approval are as follows:

1. Bell Road Interchange (DOT 025 392 A)
2. 103 Ave overpass(DOT 025 399 X)
3. Thunderbird Road Intersection (No Railroad)
4. Greenway Road Intersection

The Feasibility study took into account engineering analysis, public input, and Emergency access to the 2 hospitals adjacent to Grand Avenue and other issues.

8. If this crossing was grade separated, provide a cost estimate of the project.
Unknown costs. Estimate \$20,000,000++ per crossing due to the urbanized location and the need to provide connections between Grand Avenue and the cross road and other issues.
9. Please describe what the surrounding areas are zoned for near this intersection. i.e. Are there going to be new housing developments, industrial parks etc.

Greenway Road Crossing: Surrounding area zoned Residential on both sides and appears well developed. BNSF vehicle offload facility is Southeast of the crossing

111th, 107th, 103rd Avenue Crossings: Area to the immediate South is Commercial while other areas are Residential. The Area Northeast of 107th Avenue and Northwest of 103rd Avenue is zoned Medical Center

10. Please supply the following: number of daily train movements through the crossing, speed of the trains, and the type of movements being made (i.e. thru freight or switching). Is this a passenger train route?

Per the FRA Website, train volumes are as follows:

Greenway Road: 15 total train movements, 2 of them switching
111th, 107th, 103rd: 13 total train movements, none of them switching

11. Please provide the names and locations of all schools (elementary, junior high and high school) within the area of the crossing.
- All Schools are in the Dysart School District
 - Surprise Elementary School, 12907 Greenway Road; El Mirage, Az 85335. 623-876-7400. Located approximately ½ mile West of the Greenway Crossing.
 - Per Dysart School District, there are no schools or students in the Youngtown/ Sun City Area.

12. Please provide school bus route information concerning the crossing, including the number of times a day a school bus crosses this crossing.

Per Tracy Keily (tracy.keily@dysart.org), Bus Router for Dysart School District, There are a total of 38 school bus crossings per day at the Greenway Road Crossing. There is no bus traffic over the 111th, 107th or 103rd avenue crossing.

13. Please provide information about any hospitals in the area and whether the crossing is used extensively by emergency service vehicles.

Boswell Memorial Hospital. 10401 W Thunderbird Ave, Located to the north of 103rd and 107th avenue crossings.

Sun Health Del E Webb Hospital, 14502 W Meeker Ave, 3 ½ miles NW of Greenway Crossing

Per input from the City of Surprise and El Mirage, Greenway Road is used for Fire Department access between the 2 cities

Per input from Boswell Memorial Hospital, 107th and 103rd avenue crossings are used extensively by EMS services to access the hospital from Youngtown, El Mirage and Peoria. Per Section 7.1.2 on page 40 of the Feasibility report, they also report that train delays are not an issue.

14. Please provide total cost of the railroad improvements to each crossing.
Cost described above.

15. Provide any information as to whether vehicles carrying hazardous materials utilize this crossing and the number of times a day they might cross it.

No factual data is available.

16. Please provide the posted vehicular speed limit for the roadway.
Greenway Road is posted as 25 mph.
111th avenue is posted between 30 and 35 mph

107th avenue is posted 30 mph on each side
103rd is posted between 25 and 30 mph in the crossing zone.

17. Do any buses (other than school buses) utilize the crossing, and how many times a day do they cross the crossing.
No factual data is available.

18. Please indicate whether any spur lines have been removed within the last three years inside a 10 mile radius of any crossings covered in this application. Please include the reason for the removal, date of the removal and whether an at-grade crossing or crossings were removed in order to remove the spur line.

No known data on spur closure in the last 10 years. Portion of the Ennis Spur leading into Luke Air Force Base was closed/ removed after 2001 (End of Webb Spur 6 rail miles away)

19. Please fill in the attached FHWA Grade Separation Guidelines Table, (from FHWA's 2007 revised second edition Railroad Highway Grade-Crossing Handbook, page 151) with a yes or no answer as to whether each item applies. Also, please provide all information to support your answers of yes or no (i.e. vehicle delay numbers, any calculations that were performed to get the answers).

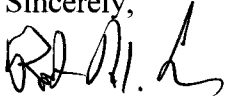
Traffic delay/day calculations summarized below.

20. Based on the current single track configuration at the crossings specified by this application, please provide the current traffic blocking delay per train. Please indicate the time in which vehicular traffic is delayed (1) to allow the train to pass at a crossing and (2) due to trains stopped on the track for any purpose. The delay is measured from the point that the warning devices are activated at the crossing to the time after the train has cleared the crossing and the warning devices are reset.

Based on correspondence from Maricopa DOT and City of Surprise, no noticeable delay occurs at the 4 crossings.

Based on calculations current delay at the 4 crossings range from ½ vehicle hour per day to 6 vehicle hours per day. Future conditions can not be adequately calculated because of no total ADT forecast for the 4 crossings.

Sincerely,



Robert Travis, PE
State Railroad Liaison
Arizona Department of Transportation
205 S 17th Ave, Room 357
MD 618E
Phoenix, AZ 85007
602-712-6193 602-712-3229 fax
rtravis@azdot.gov

enclosures

cc: Marcel Benberou, ADOT
Melvin Thomas, BNSF
Barry Brown, CEI/ ADOT
Mohammad Zaid, ADOT
Robert Hansman, Dibble Engineering
Suneel Garg, City of Surprise
Vicki Steward, McDOT

FHWA - GRADE SEPARATION GUIDELINES

Highway-rail grade crossings should be considered for

grade separation or otherwise eliminated across the railroad

right of way whenever one or more of the following conditions exist:

| Crossing Name | Greenway | 111th ave | 107th ave | 103rd ave |
|--|----------|-----------|-----------|-----------|
| The highway is a part of the designated Interstate Highway System | NO | NO | NO | NO |
| The highway is otherwise designed to have full controlled access | NO | NO | NO | NO |
| The posted highway speed equals or exceeds 70 mph | NO | NO | NO | NO |
| AADT exceeds 100,000 in urban areas or 50,000 in rural areas | NO | NO | NO | NO |
| Maximum authorized train speed exceeds 110 mph | NO | NO | NO | NO |
| An average of 150 or more trains per day or 300 million gross tons/year | NO | NO | NO | NO |
| Crossing exposure (trains/day x AADT) exceeds 1M in urban or 250k in rural, or passenger train crossing exposure exceeds 800k in urban or 200k in rural | NO | NO | NO | NO |
| Expected accident frequency for active devices with gates, as calculated by the US DOT Accident Prediction Formula including five-year accident history, exceeds 0.5 | NO | NO | NO | NO |
| Vehicle delay exceeds 40 vehicle hours per day | NO | NO | NO | NO |

Calculations for H6866 various crossings in support of FHWA grade separation form
R. Travis, ADOT

| Crossing | DOT # | ADT now | ADT 2030 | ADT No Build | Accident Prediction 2030 Now | Train Traffic | Vehicle Delay (hrs/day) now | Vehicle Delay (hrs/day) 2030 |
|----------|---------|------------|-------------|-----------------|---------------------------------|------------------|--------------------------------|---------------------------------|
| Greenway | 025651J | 696 | 1480 | 0.05 | 0.002 | 15 | 0.241667 | 0.513889 |
| 111th | 025397J | 1007 | 3500 | 0.032 | 0.085 | 13 | 0.303032 | 1.053241 |
| 107th | 025398R | 18562 | 2010 | 0.036 | 0.069 | 13 | 5.585787 | 0.604861 |
| 103rd | 025399X | 17000 | 4440 | 0.189 | 0.091 | 13 | 5.115741 | 1.336111 |

Note: now ADT for Greenway and 111th are peak volumes only
ALL ADT for 2030 are peak volume only

vehicle delay = $(2 \text{ min/train} * \text{train/day}) * (\text{ADT} / (24 \text{ hr} * 60 \text{ min/hr})) / 60 \text{ min}$
vehicle delayed 2 minutes per train

ARIZONA DEPARTMENT OF TRANSPORTATION

UTILITY AND RAILROAD ENGINEERING SECTION

RAILROAD AGREEMENT

Between

**THE STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION**

and

BNSF RAILWAY COMPANY

BNSF

June 29, 2010

AGREEMENT No. 3100-08-BNSF

BNSF Cont No. _____

BNSF File No. 025651 J

AGREEMENT TRACS No. 060 MA 139 H6866 01C

CONSTRUCTION TRACS No. 060 MA 139 H6866 01C

CONSTRUCTION PROJECT No. ARRA-060-B(201)A

FEDERAL AID PROJECT No. ARRA-060-B(201)A

HIGHWAY: PHOENIX-WICKENBURG HIGHWAY (US 60)

LOCATION: SR 303 to 99th Avenue Widening

AAR/DOT # 025 651 J @ Greenway Road

Railroad LS 7208 MP 173.45

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| Signature & Notary Public Pages..... | 17 |
| Exhibit A | Print Showing work to be done at the crossing |
| Exhibit B | Easement |
| Exhibit B-1 | Memorandum of Easement. |
| Exhibit B-2 | Legal Description provided by STATE |
| Exhibit B-3 | Print showing limits of the required easement from BNSF that State needs to construct the PROJECT |
| Exhibit C | BNSF standard document “C” Contractor Requirements |
| Exhibit C-1 | BNSF standard document “C-1” Agreement Between BNSF Railway Company and Contractor |
| Exhibit D | Summary Of Costs To Be Paid By This AGREEMENT from STATE to BNSF |
| Exhibit D-1 | BNSF Signal Estimate |
| Exhibit D-2 | BNSF Signal Plan |
| Exhibit D-3 | BNSF Surface Estimate |

This AGREEMENT is executed to be effective as of this _____ day of _____, ("Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("BNSF"), and the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "STATE". All lettered exhibits are incorporated and made a part of this AGREEMENT by reference and attachment regardless of designation or alphabetical order.

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Surprise, County of Maricopa, State of Arizona; BNSF (predecessor: ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY) and the City of Surprise entered into an Agreement dated the 7th day of August of 1967, , recorded in Maricopa County records at DKT 6748, Pg 488, which granted the right to construct, maintain and use the highway crossing of the BNSF right-of-way and over its tracks, in Maricopa County, State of Arizona, now designated as AAR/DOT # 025 651 J RRMP 173.45 Phoenix Subdivision. The STATE desires to improve the existing Greenway Road at-grade crossing by widening the roadway and associated at-grade crossing. The STATE has requested an easement from the BNSF for the right to construct, maintain and use the proposed new highway crossing of the BNSF right-of-way and over its tracks as shown on Exhibit A. The state will pay BNSF the sum of two thousand two hundred seventy two dollars and 56/100 Dollars (\$ 2,272.56) as compensation for the Temporary Construction Easement and Permanent Easement as needed.

The parties hereto desire to express in writing their understanding and agreement with respect to the PROJECT and pursuant to which the crossing, connecting roadways and other improvements are to be constructed and maintained.

DEFINITIONS:

- A. AGREEMENT means this specific AGREEMENT with all attached exhibits together with all attachments incorporated by reference.
- B. AGREEMENT TRACS NO. means the agreement accounting number utilized for ADOT Construction Project, which is 060 MA 139 H6866 01C.
- C. CONSTRUCTION TRACS NO. means the roadway construction accounting number utilized for ADOT Construction Project, which is 060 MA 139 H6866 01C.
- D. CONSTRUCTION PROJECT NO. ARRA-060-B(201)A.
- E. EMERGENCY WORK by BNSF means work of an immediate nature required to maintain the integrity of rail service, restore railroad operations or for the protection of persons or BNSF property.
- F. PROJECT means all Greenway Road work related to the construction of including, but not limited to, any and all roadway improvements, changes to railroad safety devices and appurtenances, temporary and permanent track work, fencing, communication, signal and electrical lines and appurtenances, grading, both temporary and permanent drainage facilities, signing and striping, modification to utilities, right-of-way acquisition, preliminary and construction engineering, contract preparation, cuts, fills, highway pavement, retaining walls and all highway facilities at the locations shown on the STATE's PROJECT plans and

specifications included herein by reference only. Additionally, temporary controls during construction must be in compliance with Section 8A-5, "Temporary Traffic Control Zones" of the Manual on Uniform Traffic Control Devices, Federal Highway Administration.

- G. RAILROAD WORK means pre-engineering, engineering, management, administration, design, preparation of plans, specifications and estimate, construction labor, materials and equipment called for in the AGREEMENT, and other work mutually agreed upon in the AGREEMENT, including approved changes in scope.

ARTICLE I – SCOPE OF WORK

This project entails construction and modification of the existing at grade crossing at Greenway Road; further identified as AAR/DOT # 025 651 J. Construction of the PROJECT shall include the following RAILROAD WORK performed by BNSF:

1. BNSF will:
 - a. Acquire and/or relocate existing crossing signal equipment as necessary;
 - b. Acquire and install additional crossing panels
 - c. Provide Permanent Easement as shown in Exhibit B-3.
 - d. Provide Temporary Construction Easement as shown in Exhibit B-3.
2. Preliminary engineering, design, contract preparation, and a project coordinator / inspector at STATE's expense as required in connection with the construction of the Project;
3. Flagging services will be paid by the STATE directly to BNSF thru separate agreement 3001-09-BNSF.
4. Procurement of materials, equipment and supplies necessary for the railroad work;

ARTICLE II – BNSF OBLIGATIONS

In consideration of the covenants of STATE set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. In consideration of the faithful performance of the STATE'S covenants contained herein, BNSF hereby grants to STATE, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive easement (hereinafter called, "Temporary Construction Easement") to construct the at grade crossing together with a Permanent Easement to use and maintain said crossing across or upon the portion of BNSF's right-of-way described further on Exhibit B-3, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate, provided such facilities do not affect the operational integrity of the STATE's at-grade crossing
- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate, provided such use or operations does not affect the operational and structural integrity of the STATE's at-grade crossing
- (d) In the event STATE is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to STATE for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to STATE herein nor shall any subsequent sale or abandonment of said right-of-way.

Provided STATE is in compliance with the terms and conditions of this Agreement, BNSF will grant to STATE, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to construct, use and maintain the at-grade crossing, substantially in the form of Exhibit B and Exhibit B-3 attached to this Agreement. STATE must pay BNSF the sum of two thousand two hundred seventy two dollars and 56/100 Dollars (\$ 2,272.56) as compensation for the Easement within sixty (60) days of issuing a Notice to Proceed pursuant to Article III, Section 14 of this Agreement after having received an invoice for the same from BNSF. This payment will be received before any construction activities can take place. If STATE fails to pay BNSF within the sixty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

The term of the Temporary Construction Easement begins on the Effective Date and ends upon substantial completion of the at-grade crossing. The Temporary Construction Easement and related rights given by BNSF to STATE in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. In the event STATE is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to STATE for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to STATE herein.

2. BNSF will furnish all labor, materials, tools, and equipment for RAILROAD WORK required for the construction of the PROJECT, such RAILROAD WORK and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the PROJECT has not commenced within six (6) months following the Notice to Proceed, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this

AGREEMENT as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this AGREEMENT upon written approval of STATE, which approval will not be unreasonably withheld.

3. BNSF will do all RAILROAD WORK set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.
4. STATE agrees to reimburse BNSF for work of an emergency nature caused by STATE or STATE's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of STATE and STATE agrees to fully reimburse BNSF for all such emergency work, of which BNSF will notify STATE at its earliest opportunity.
5. During the construction of the Project, BNSF will send STATE itemized monthly invoices detailing the costs of the RAILROAD WORK performed by BNSF under this Agreement. Except for the final invoice, monthly invoices shall only be submitted for costs of five hundred dollars (\$500) or more. Within one hundred and twenty (120) days after completion of RAILROAD WORK BNSF will send STATE a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 6 herein, STATE must pay the final invoice within sixty (60) days of the date of the final invoice. Invoices shall include a detailed cost run summary, the appropriate AGREEMENT and CONSTRUCTION TRACS numbers and shall be labeled as "Progress Invoice" or "Final Invoice" as the case may be. Costs shall be accumulated and invoiced in accordance with the Federal Acquisition regulations. The United States Code of Federal Regulations, 23 CFR 646 B is incorporated into this AGREEMENT by reference. Prior to submitting the first invoice to STATE, BNSF will notify STATE, in writing, of the actual BNSF construction start date. BNSF construction start date shall not be prior to receiving a Notice to Proceed from STATE. Prior to submitting the final invoice to STATE, BNSF agrees to notify STATE, in writing, of the actual BNSF construction completion date.
6. BNSF shall be given progress copies of the STATE's PROJECT plans at the 30%, 60% and 95% level, along with a copy of the final PS&E submittal by the STATE's Consultant. BNSF is encouraged to make comments to the STATE's PROJECT plan with regard to BNSF facilities.

ARTICLE III – STATE OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, STATE agrees as follows:

1. STATE will furnish a pdf file of railroad-specific 100% plans and specifications (**in English Units**) for the PROJECT to BNSF. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this AGREEMENT and are hereby incorporated herein. Any approval of the

plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the horizontal and vertical clearance standards for structures over BNSF track facilities, and such plans and specifications will not adversely impact BNSF operations. Such approval by BNSF shall not be deemed to mean that the plans and specifications, or construction, is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.

2. STATE or STATE's Contractor will make any required application and obtain all required permits and approvals for the construction of the PROJECT.
3. STATE will provide for and maintain minimum vertical and horizontal clearances, as required and approved by BNSF as part of the plans and specifications for the PROJECT.
4. STATE will acquire all rights-of-way necessary for the construction of the PROJECT.
5. STATE must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual for installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project. The most recent version of the Utility Accommodation Manual is available on the BNSF website.
6. STATE will construct the PROJECT as shown on the plans referenced pursuant to Exhibit A of this Agreement and do all work provided for in the plans and specifications for the PROJECT, except RAILROAD WORK that will be performed by BNSF hereunder. STATE will furnish all labor, materials, tools and equipment for the performance of STATE's work. The principal elements of STATE's work are as follows:
 - (a) Reconstruction of the at grade crossing
 - (b) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
 - (c) Provide suitable drainage, both temporary and permanent as required for the project;
 - (d) Provide appropriate pedestrian control during construction;
 - (e) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;
7. STATE's work will be performed by STATE or STATE's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

8. STATE will require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman, in accordance with the requirements of Exhibit C attached hereto. Additionally, STATE will require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property, or near BNSF tracks making reference to BNSF's file number 025651J.
9. STATE will include the following provisions in any contract with its contractor(s) performing work on said PROJECT:
 - (a) The contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies, and by field inspection. The contractor shall contact Blue Stake and have all underground facilities in the PROJECT area marked to verify their locations prior to performing any construction activity that may damage such facilities. The contractor will be responsible for contacting BNSF's Engineering Representative Richard Barnitz and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other lines (fiber optic, cable, communication or otherwise) may exist.
 - (b) Failure to mark or identify these Lines will be sufficient cause for BNSF's Engineering Representative at **505-767-6826** to stop construction at no cost to the STATE or BNSF until these items are completed.
 - (c) The contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The contractor must cooperate fully with any telecommunications company (ies) in performing such rearrangements.
 - (d) In addition to the liability terms contained elsewhere in this Agreement, the contractor is hereby required to execute Exhibit C and Exhibit C-1 agreement with BNSF which will require the purchase of railroad protective insurance policy with endorsements requested within the Exhibit C and Exhibit C-1 and in addition, name the state of Arizona as an additional insured. The contractor shall also take full responsibility for their subcontractors through such Exhibit C and Exhibit C-1. The contractor shall further be caused to indemnify, defend and hold harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3)

any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). To the extent permitted by law; **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

10. STATE will incorporate in each prime contract for construction of the PROJECT, or the specifications therefore, (i) the provisions set forth in Article III, Sections 7, 8, 9 and 11; (ii) the provisions set forth in Article IV, Sections 3 and 4; and (iii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.
11. Except as otherwise provided below in this Section 11, all construction work performed hereunder by STATE for the PROJECT will be pursuant to a contract or contracts to be let by STATE, and all such contracts will include the following:
 - (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
 - (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
 - (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work will have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and (d) If the STATE's contractor defaults his obligation under his contract with the STATE for any reason his replacement shall be responsible to comply with all related obligations to BNSF as contained in the original contract between the STATE and the first contractor. (d) To facilitate scheduling for the Project, STATE shall have its contractor give BNSF's Road Master at 602-708-3593 thirty (30) days advance notice of the proposed times and dates for work windows. BNSF and STATE's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows.
12. If the STATE's contractor defaults his obligation under his contract with the STATE for any reason their replacement shall be responsible to comply with all related obligations to BNSF as contained in the original contract between the STATE and the first contractor.

13. STATE will give BNSF's Manager of Public Projects written Notice to Proceed with the RAILROAD WORK after receipt by the STATE of the Opinion and Order from the Arizona Corporation Commission. BNSF will not begin the RAILROAD WORK (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from STATE.
14. STATE agrees to reimburse BNSF for work of an emergency nature caused by STATE or STATE's contractor in connection with the PROJECT which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of STATE; however, STATE reserves the right to review the cause of said work to determine payment responsibilities. If the parties cannot agree on the responsible party of the damages, the matter will be resolved through arbitration pursuant to A.R.S. Section 12-1518.
15. BNSF may charge STATE for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the PROJECT. Such charges will be considered part of the actual cost of the PROJECT, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.
16. **TO THE FULLEST EXTENT PERMITTED BY LAW, STATE HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM (I) THE STATES SOLE USE AND/OR OCCUPANCY OF THE CONSTRUCTION SITE, (II) THE USE, OCCUPANCY OR PRESENCE OF STATE'S CONTRACTORS, TO THE EXTENT THE STATE HAS BREACHED THIS AGREEMENT BY ALLOWING CONTRACTOR AGENTS ONTO RAILROAD PROPERTY WITHOUT SUCH CONTRACTOR AGENTS HAVING AN EXHIBIT C OR EXHIBIT C-1 AGREEMENT EXECUTED IN THE FORM ATTACHED AS EXHIBITS HERETO SIGNED WITH THE RAILROAD, (III) THE SOLE ACTS OR OMISSIONS OF STATE, ITS, OFFICERS OR EMPLOYEES IN, ON, OR ABOUT THE CONSTRUCTION SITE, (V) STATE'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO STATE PURSUANT TO ARTICLE II OF THIS AGREEMENT, (VI) ANY RIGHTS OR INTERESTS GRANTED TO STATE PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VII) STATE'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY STATE, OR (VIII) AN INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF STATE, ITS OFFICERS OR EMPLOYEES BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.**

ARTICLE IV – JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this AGREEMENT will be performed in a good and workmanlike manner and each portion will be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.
2. STATE will require its contractor(s) to reasonably adhere to the PROJECT's construction schedule for all PROJECT work. The parties hereto mutually agree that BNSF's failure to complete the RAILROAD WORK in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this AGREEMENT by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the RAILROAD WORK in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF-owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct, or indirect, consequences or costs resulting from any such reallocation will not constitute a breach of this AGREEMENT by BNSF. Nevertheless, BNSF shall endeavor to utilize all means at its disposal to comply with the original schedule.
3. BNSF will have the right to stop construction work on the PROJECT if any of the following events take place: (i) STATE (or any of its contractors) performs the PROJECT work in a manner contrary to the plans and specifications approved by BNSF; (ii) STATE (or any of its contractors), in BNSF's opinion, executes the PROJECT work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the PROJECT. (iv) STATE fails to pay BNSF for the Temporary Construction Easement and the Permanent Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by STATE or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until valid acceptable insurance has been delivered to and accepted by BNSF. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. Prior to ordering the stoppage of work BNSF shall communicate such deficiencies to the STATE's Engineer and attempt to seek corrections to such deficiencies. In the event that BNSF desires to stop construction work on the PROJECT, BNSF agrees to notify the STATE's Engineer in writing.
4. STATE shall have the right to request that any BNSF Contractor or any employee of a BNSF Contractor who performs work within STATE right of way and which affects STATE's operations or facilities, be removed from STATE right

of way for incompetence, neglect of duty, unsafe conduct or misconduct. In the event BNSF or its Contractor elects not to honor such request, STATE may stop the work within its right of way until the matter has been fully resolved to STATE's satisfaction. Before such action is taken the matter will be attempted to be resolved through the STATE's Engineer if the problem occurs during the initial construction or through the District Permits Supervisor if the problem occurs during a subsequent maintenance effort. STATE shall make the final determination. If the termination of RAILROAD WORK should result in delay claims by ADOT's Contractor, these costs shall be passed to BNSF for payment. For all RAILROAD WORK or subsequent maintenance work conducted by BNSF within STATE right of way BNSF shall acquire a permit for such activity from the applicable STATE District Permits Office. BNSF shall meet and comply will all provisions of said permit.

5. STATE will supervise and inspect the operations of all STATE contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this AGREEMENT and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by STATE personnel at any time during construction of the PROJECT, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the PROJECT will not proceed until STATE corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify the STATE's Engineer for appropriate corrective action.
6. Pursuant to this section and Article II, Section 3 herein, STATE will, out of funds made available to it for the construction of the PROJECT, reimburse BNSF in full for the actual costs of all work performed by BNSF under this AGREEMENT.
7. All expenses detailed in statements sent to STATE pursuant to Article II, Section 3 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this AGREEMENT by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the PROJECT even though such work may have preceded the date of this AGREEMENT and are included in the overhead rates of BNSF.
8. For projects that are funded by the American Recovery and Reinvestment act (ARRA), STATE and BNSF agree as follows:
BNSF and State agree that all applicable terms of ARRA funding shall be complied with by the party responsible therefore under ARRA; e.g., BNSF shall provide information to STATE including but not limited to labor that is used on the PROJECT. This information will include a summary of personnel, hours, dates and type of work performed on the PROJECT. STATE or its CONTRACTOR will use this information to make all applicable reports, including but, not limited to the Federal Highway Administration on the number of jobs created and/or saved as part of the PROJECT
9. The parties mutually agree that no construction activities for the PROJECT, nor future maintenance of the at grade crossing within twenty-five (25) feet of BNSF's

railway once completed, that by mutual agreement of the parties have the potential to impact BNSF facilities and operations within BNSF's right-of-way, will be permitted during the fourth quarter of each calendar year. EMERGENCY WORK will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: (800-832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

10. In addition to the terms and conditions set forth elsewhere in this AGREEMENT, BNSF and STATE agree to the following terms upon completion of construction of the PROJECT:

- (a) Before entering upon BNSF's right-of-way for maintenance purposes, by STATE personnel, STATE shall notify BNSF's Road master. Prior written authorization by BNSF's Manager Public Projects will be required for entry into the BNSF right of way during the fourth quarter of each calendar year. STATE is not obligated to execute BNSF's Exhibit C and Exhibit C-1. STATE will abide by the flagging safety requirements set forth in Exhibit C. If work is contracted, STATE will require its prime contractor(s) to comply with the obligations in favor of BNSF set forth in Exhibit C and Exhibit C-1, as may be revised from time to time.
- (b) It is expressly understood by STATE and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (c) If the State performs alterations or modifications to the at-grade crossing within twenty-five (25) feet of BNSF's railway, then without the use of a contractor the States self insurance shall be accepted and evidenced on a certificate of insurance with the following limits:

Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations
- The coverage shall be primary under the limitations of ARS 41-621 and non-contributing with respect to any insurance

Business Automobile Coverage. This Coverage shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired
- The coverage shall be primary under the limitations of ARS 41-621 and non-contributing with respect to any insurance

Workers Compensation and Employers Liability Coverage including coverage for, but not limited to:

- State's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

The State is allowed to self-insure part or all of the insurance requirements without the prior written consent of Railroad. Any deductible, self-insured retention or other financial responsible for claims shall be covered directly by the state in lieu of insurance.

- (d) That this crossing will be transferred back to the City of Surprise, Arizona at a later date and that a separate agreement will be executed between BNSF, STATE and the City of Surprise to transfer ownership, maintenance and easement from STATE to Surprise.

11. STATE hereby grants to BNSF, at no cost or expense to BNSF, the right to retain an existing dedicated right of access from STATE's property to BNSF tracks for maintenance purposes.
12. BNSF may, at its expense, make future changes or additions to the railroad components of the at-grade crossing if necessary or desirable, in BNSF's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the highway components of the crossing. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the highway components of the crossing to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the crossing, will be divided between BNSF and STATE in such shares as may be mutually agreed to by the parties hereto, subject to Arizona State Transportation Board approval. Before making any such changes, alterations or reconstruction of the highway facilities that will effect the STATE, BNSF shall provide to the STATE copies of the plans and specifications and receive the STATE's written approval prior to commencing work. BNSF is not required to receive written approval from the STATE prior to performing routine maintenance on non-STATE components.
13. STATE may, at STATE's sole expense, alter or reconstruct the highway components of the at-grade crossing if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction will not encroach further upon the easement limits previously granted to State by BNSF, without obtaining BNSF's prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement.

14. The covenants and provisions of this AGREEMENT are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.
15. In the event construction of the PROJECT does not commence within two (2) years of the Effective Date, this AGREEMENT will become null and void. All monies paid to BNSF by STATE for easements/licenses or other fees shall be returned to STATE.
16. BNSF's Manager, Public Projects will be given a notice to proceed when the Opinion and Order has returned from the Arizona Corporation Commission to the STATE. Construction of the PROJECT, on BNSF right-of-way, shall not be commenced until STATE'S contractor shall have given not less than thirty (30) working days prior written notice to BNSF's Manager Public Projects, making reference to BNSF's File Number 025397J which notice shall state the time that operations for construction of the Project, on BNSF right-of-way, shall commence.
17. STATE approval is required for any invoice total which exceeds the cost estimate set forth in Exhibit D plus any approved changes by more than ten percent (10%). Invoices which exceed the original or revised estimated cost by more than ten percent (10%) without prior written approval shall be returned to BNSF pending resolution.
18. If STATE, due to an audit of BNSF's billing sent to STATE has any audit exceptions, STATE and BNSF shall discuss the audit exceptions and agree upon the amount of billing to STATE that is the subject matter of the audit exceptions. If, when doing such review, it is determined by STATE and BNSF that BNSF is to reimburse STATE for any payment already made by STATE to BNSF, BNSF shall make such reimbursement within ninety (90) days after STATE and BNSF have made such determination. Likewise, if it is determined by STATE and BNSF that STATE needs to make any additional payment to BNSF, STATE shall make such additional payment within ninety (90) days after STATE and BNSF have made such determination. If any audit exception(s) cannot be settled by STATE and BNSF through their discussions, the audit exception(s) shall be settled through compromise, arbitration or adjudication as provided in this AGREEMENT
19. This AGREEMENT is subject to the provisions of Chapter 1 of Title 35, Arizona Revised Statutes.
20. BNSF shall comply with all applicable provisions of Executive Order 75-5 and 99-4, "Non-Discrimination in Employment by Government Contractors and Subcontractors".
21. All parties hereby are put on notice that this AGREEMENT is subject to cancellation by the Governor pursuant to A.R.S. § 38-511.
22. In accordance with A.R.S. § 35-214, all books, accounts, reports, files and other records relating to this AGREEMENT shall be subject at reasonable times to inspection and audit by STATE for five (5) years after the receipt of final

payment. At STATE's discretion said inspection and audit may be held at BNSF's office during normal business hours. STATE shall conduct its inspection and audit at its expense.

23. This AGREEMENT, including any schedules, exhibits or attachments hereto, constitutes the entire AGREEMENT between the parties, and no understanding or obligation not expressly set forth herein shall be binding upon them. No modification, amendment or alteration of this AGREEMENT shall be valid unless it is in writing and signed by both parties.
24. This AGREEMENT shall be governed by the laws of the State of Arizona.
25. The waiver by either party of any breach or failure to provide full performance under any of the terms or conditions of this AGREEMENT shall not be construed as a waiver of any other term or condition, or of any subsequent breach of the same or any other term or condition.
26. Any notice provided for or concerning this AGREEMENT shall be in writing and be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:
BNSF's Manager Public Projects
740 East Carnegie Drive
San Bernardino, CA 92408

State of Arizona
Arizona Department of Transportation
Utility & Railroad Section
Attn: Manager
205 South 17th Avenue – Mail Drop 618E
Phoenix, Arizona 85007

27. STATE'S PROJECT plans and specifications for TRACS No. 060 MA 139 H6866 01C are incorporated by reference only.
28. Neither termination nor expiration of this AGREEMENT will release either party from any liability or obligation under this AGREEMENT, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.
29. To the maximum extent possible, each provision of this AGREEMENT will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this AGREEMENT is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.
30. This AGREEMENT (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete AGREEMENT between BNSF and

STATE with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

IN WITNESS WHEREOF, STATE has caused this AGREEMENT to be executed and attested by its duly qualified and authorized officials, and BNSF has executed this AGREEMENT, both as of the day and year first above written.

STATE OF ARIZONA

JOHN HALIKOWSKI, DIRECTOR

By: _____ Date: _____

Printed Name: _____

Utility and Railroad Engineering Section

ACKNOWLEDGMENT BY STATE

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ the Manager of the Utility & Railroad Engineering Section, Arizona Department of Transportation.

My Commission Expires: _____

Notary Public

BNSF RAILWAY COMPANY

By: _____ Date: _____

Printed Name: _____

Title: _____

ACKNOWLEDGMENT BY BNSF

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, the _____ on behalf of Burlington Northern Santa Fe, a Delaware corporation.

My Commission Expires: _____

Notary Public

Exhibit B

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that **BNSF RAILWAY COMPANY**, (formerly known as The Burlington Northern and Santa Fe Railway Company and formerly known as Burlington Northern Railroad Company) a Delaware corporation, whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830, Grantor, for two thousand two hundred seventy two dollars and 56/100 Dollars (\$ 2,272.56)) to it paid by Arizona Department of Transportation , Grantee, and the promises of the Grantee hereinafter specified, does hereby remise, release and quitclaim unto the Grantee, subject to the terms and conditions hereinafter set forth, an **EASEMENT** for the purpose of constructing, maintaining and operating an at-grade crossing and for no other purpose, located at Railroad Mile Post 173.45, hereinafter called at-grade crossing, upon and across the premises, situated in County of Maricopa, State of Arizona, being more particularly described on Exhibit "B-3 (Parcel 1)", attached hereto and by this reference made a part hereof.

RESERVING, however, unto the Grantor, its successors and assigns, the right to construct, place, operate, maintain, alter, repair, replace, renew, improve and remove communication lines above, below and on the surface of the premises, including, without limitation, transmission by conduit, fiber optics, cable, wire or other means of electricity, voice data, video, digitized information, or other materials or information, pipelines, utility lines, track and facilities including the right of ingress and egress in any such manner as does not unreasonably interfere with Grantee's use of the premises for said Structure, and further reserving unto Grantor, its successors and assigns, all right and privilege of ingress and egress to said premises as Grantor, its successors and assigns may require to investigate and remediate environmental contamination and hazards, and further reserving the right and privilege to use said land for any and all purposes not inconsistent with the use thereof for said Structure.

The foregoing easement is made subject to and upon the following express conditions:

1. To existing interests in the above-described premises to whomsoever belonging and of whatsoever nature and any and all extensions and renewals thereof, including but not limited to underground pipe line or lines, or any type of wire line or lines, if any.
2. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of said Structure shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the

premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing.

3. The Grantee shall bear the cost of removal, relocation or reconstruction of any and all right of way fences, telephone or telegraph poles, or other facilities, the removal, relocation or reconstruction of which may be made necessary by reason of the use of said premises for said Structure purposes.
4. The Grantee shall, at its own cost and expense, make adjustment with industries or other lessees of Grantor for buildings or improvements that may have to be relocated, reconstructed or destroyed by reason of the construction and maintenance of said Structure on said premises.
5. If during the construction or subsequent maintenance of said Structure, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Grantee shall indemnify, protect and defend the Grantor from any and all liability, claims or demands, if any, which arise as a result of exposure and/or removal of said contaminated soils or materials. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.
6. Grantor and Grantee have entered into that certain at-grade Agreement dated as of _____ concerning the Premises (the "At-grade Agreement"). The terms of the Overpass Agreement are incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the Overpass Agreement is, for whatever reason, no longer in effect.
7. The Grantee or its contractor(s) shall telephone Grantor's Communication Network Control Center at **(800) 533-2891** (a 24 hour number) to determine if fiber optic cable is buried anywhere on the premises; and if so, the Grantee or its contractor(s) will contact the Telecommunications Company(ies) involved, and make arrangements with the Telecommunications Company(ies) for protection of the fiber optic cable prior to beginning any work on the premises.
8. If said described premises, or any part thereof, shall for a period of two years cease to be used by said Grantee, or by the public, for the purpose, as aforesaid, or should they be converted to any other use whatsoever, , then and in any such event, all the right, title, interest, benefits and enjoyment of said Grantee, or of the public, in and to said premises, for any purposes whatsoever, shall immediately cease and the said Grantor, its successors and assigns, may, at its or their option, re-enter, retake and hold said described lands and premises as of the present estate of said Grantor without compensation to said Grantee, the public, or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of, or damage

to any premises or the improvements thereon abutting on said easement area or any part thereof.

9. The Grantor does not warrant its title to said premises nor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interest of others, including the tenants and licensees of the Grantor.

10. This easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for public use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

IN WITNESS WHEREOF, the said **BNSF RAILWAY COMPANY** has caused this instrument to be signed by its authorized officer, and the corporate seal affixed on the _____ day of _____, 20____.

BNSF RAILWAY COMPANY

By: _____

General Director-
Land Revenue Management

ATTEST:

By: _____

Assistant Secretary

STATE OF TEXAS)

) ss.

COUNTY OF TARRANT)

I, _____, a Notary Public in and for said County and State, do hereby certify that _____, General Director-Land Revenue Management, of BNSF Railway Company, and _____, Assistant Secretary of said BNSF Railway Company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, and to me personally known to be respectively the General Director-Land Revenue Management and Assistant Secretary of said corporation, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of said corporation, being thereunto duly authorized for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____,
20__.

Notary Public

My commission expires: _____

EXHIBIT "B-1"

Memorandum of Easement

THIS MEMORANDUM OF EASEMENT is hereby executed this ____ day of _____, 20____, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and Arizona Department of Transportation, a political subdivision ("**Grantee**"), whose address for purposes of this instrument is 205 S 17th Avenue, Phoenix Arizona 85009, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Maricopa County, Arizona as described on **Exhibit " B"** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____ (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

[Signature page follows]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____ (name) as _____ (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

Notary Public

(Seal)

My appointment expires: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20____, by
_____(name) as _____(title) of
_____, a _____.

Notary Public

(Seal)

My appointment expires: _____

Exhibit B-2 (legal descriptions)
Exhibit B-3 plan view of easements

Insert Exhibits B-2 and B-3 as needed

DESCRIPTION FOR NEW RIGHT OF WAY

BNSF Railway Company

Parcel No. 1:

That portion of the existing railroad right of way of the BNSF Railway Company in the Southeast quarter (SE¼) of Section 2, Township 3 North, Range 1 West, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

Commencing at a Maricopa County (MC) aluminum cap stamped 'RLS 36563' marking the South quarter corner of said Section 2, being North 89°27'48" West 2631.29 feet from a City of El Mirage brass cap stamped 'BM 31-14' marking the Southeast corner of said Section 2;

thence along the South line of said Section 2 South 89°27'48" East 924.20 feet to the existing right of way line common to US Highway 60 (WICKENBURG-PHOENIX HIGHWAY) and the B.N.S.F. Railroad;

thence along said existing right of way line common to US Highway 60 and B.N.S.F. Railroad North 46°37'39" West 40.81 feet to the POINT OF BEGINNING;

thence continuing along said common existing right of way line North 46°37'39" West 24.22 feet to the existing southeasterly right of way line of Greenway Road;

thence along said existing southeasterly right of way line of Greenway Road North 43°22'21" East 5.00 feet;

thence South 46°37'39" East 24.22 feet;

thence South 43°22'21" West 5.00 feet to the POINT OF BEGINNING.

Parcel No. 2:

That portion of said existing railroad right of way of the BNSF Railway Company in the Northwest quarter (NW¼) of Section 18, Township 3 North, Range 1 East, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

(continued)

| |
|--|
| EXHIBIT B-2 PARCEL 1 AGREEMENT 3100-08-BNSF DOT # 025 651 J IN SURPRISE, ARIZONA |
|--|

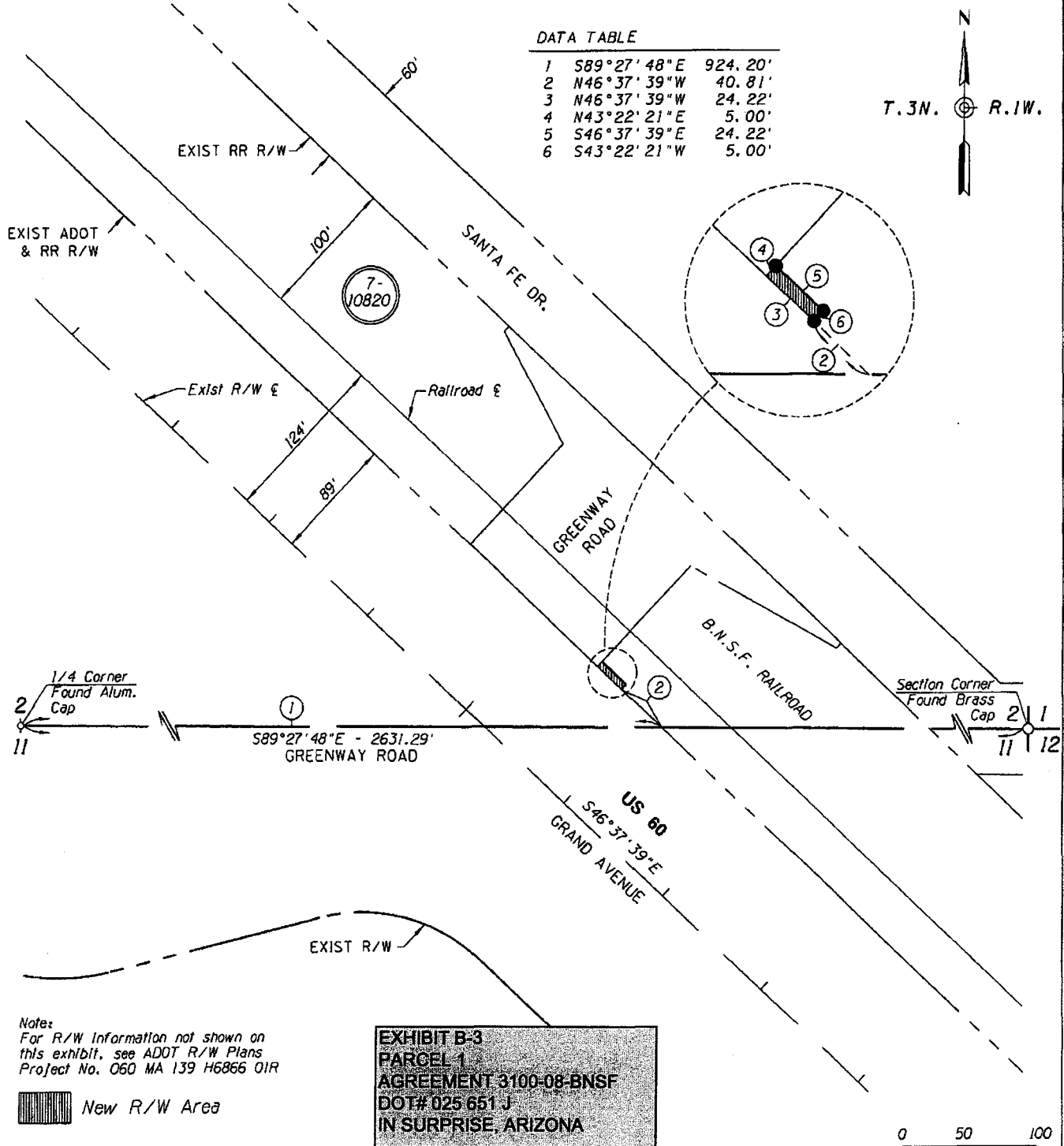
PROJECT: 060 MA 139 H6866 01R **LOCATION:** Grand Ave, SR 303L – 99th Ave **PARCEL:** 7-10820

sw 05/07/2009

PARCEL EXHIBIT SHEET TO OBTAIN BNSF PERMANENT RIGHT OF ENTRY

| TRACS NO : 060 MA 139 H6866 01R FED ID : UNASSIGNED | PARCEL NUMBER | TOTAL AREA | AREA REQUIRED | | | REMAINDER | |
|--|------------------|---------------|--------------------------------------|------------------------------------|------------------|-----------|-------|
| | | | GROSS INCLUDING (EXISTING R/W) | NET EXCLUDING (EXISTING R/W) | NEW EASEMENTS | LEFT | RIGHT |
| | 7-10820 | | | 121 | | | |

ALL AREAS ARE IN SQUARE FEET UNLESS OTHERWISE NOTED



Notes:
For R/W Information not shown on this exhibit, see ADOT R/W Plans
Project No. 060 MA 139 H6866 01R

New R/W Area

EXHIBIT B-3
PARCEL 1
AGREEMENT 3100-08-BNSF
DOT# 025 651 J
IN SURPRISE, ARIZONA

URS 7720 North 16th Street - Suite 100
Phoenix, AZ 85020 - 602.371.1100

...\\ROW\RR\EXHIBITS\RR_NRW1.DGN

BNSF PARCEL EXHIBIT NO.1

5/1/2009
6:13:17 AM

Sheet 1 of 6

EXHIBIT "C"
CONTRACTOR REQUIREMENTS

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of US 60/ Grand Avenue widening from SR 303 to 99th Avenue (060 MA 139 H6866 01C); specifically at Greenway Road at grade crossing AAR/DOT # 025 651 J.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify the Arizona Department of Transportation (ADOT) and Railway's Manager Public Projects, telephone number (909) 386-4472 at least thirty (30) calendar days before commencing any

work on Railway Property. Contractors notification to Railway, must refer to Railroad's file

- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Superintendent at (602) 382-5828 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts

- 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained: [Note to Drafter: The vertical clearance should mirror the final negotiated design clearance]
 - 25' Horizontally from centerline of nearest track
 - 23'-3 ½" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to ADOT and must not be undertaken until approved in writing by the Railway, and until ADOT has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by ADOT for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the

contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services on railroad property under this Agreement.

The background screening shall at a minimum meet the criteria defined by the e-RAILSAFE program outlined at <http://www.e-railsafe.com> in addition to any other applicable regulatory requirements. The e-RAILSAFE program uses rail industry background screening standards.

Contractor shall obtain consent from all employees screened in compliance with the e-RAILSAFE program criteria to release completed background information to BNSF. Contractor shall be subject to periodic audit to ensure compliance.

Contractor shall not permit any of its employees, subcontractors or agents to perform services on property hereunder who are not approved under e-RAILSAFE program standards. Railroad shall have the right to deny entry onto its premises to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth for the e-RAILSAFE program or who pose a threat, in Railroad's reasonable opinion, to the safety or security of Railroad's operations.

Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster at (602) 382-5803 a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.

- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway will be borne by the (Agency). The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- **1.05.03d** The average train traffic on this route is _____ freight trains per 24-hour period at a timetable speed of _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.

- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILROAD'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative (505-767-6826). All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of

depth, must be shored where there is any danger to tracks, structures or personnel.

- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather _____
(if non-Railway location)
5. Social Security # _____
6. Name (last, first, mi) _____
7. Address: Street: _____ City: _____ St. _____ Zip: _____
8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.): _____
12. Treatment:
 ? First Aid Only
 ? Required Medical Treatment
 ? Other Medical Treatment
13. Dr. Name _____ 30. Date: _____
14. Dr. Address:
 Street: _____ City: _____ St: _____ Zip: _____
15. Hospital Name: _____
16. Hospital Address:
 Street: _____ City: _____ St: _____ Zip: _____
17. Diagnosis: _____

**FAX TO
RAILWAY AT (817) 352-7595
AND COPY TO
RAILWAY ROADMASTER FAX**

EXHIBIT "C-1"

**Agreement
Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR**

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: 025651J

Agency Project: US 60/ Grand Avenue widening from SR 303 to 99th Avenue (060 MA 139 H6866 01C);
specifically at Greenway Road at grade crossing AAR/DOT # 025 3651 J

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 20__ [***Drafter's Note: insert the date of the contract between the Agency and the Contractor here] with the Arizona Department of Transportation (ADOT) for the performance of certain work in connection with the following project

_____. Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for ADOT (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railroad to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILROAD FOR RAILROAD'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to **Railroad** payments related to the Federal Employers Liability Act or a **Railroad** Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Arizona's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Agreement

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railroad** for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by **Railroad**. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and **Railroad** must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming **Railroad** as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of **Railroad**. If granted by **Railroad**, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this **Agreement**, be covered by contractor's insurance will be covered as if contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation

provision must be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-766-2299

Any insurance policy must be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this **Agreement** has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this **Agreement**. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, **Railroad** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming **Railroad** as an additional insured, and requiring that the subcontractor release, defend and indemnify **Railroad** to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify **Railroad** herein.

Failure to provide evidence as required by this section will entitle, but not require, **Railroad** to terminate this **Agreement** immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this **Agreement**. Damages recoverable by **Railroad** will not be limited by the amount of the required insurance coverage.

For purposes of this section, **Railroad** means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, , including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay for certain trains may be \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Field Engineering representative at (505-767-6826) four (4) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Manager Public Projects

Contact Person: _____
Address: _____

Accepted and effective this ____ day of 20__.

City: _____ State: _____ Zip: _____
Fax: _____
Phone: _____
E-mail: _____

EXHIBIT D

TRACS 060 MA 139 H6866 01C
Project ARRA-060-B(201)A
Agreement 3100-08-BNSF
BNSF LS 7208, Rail Mile 167.50 to 178.45, Phoenix Subdivision
Surface and Signal work at Greenway Road
DOT # 025 651 J

Summary of Costs to be paid by STATE thru this agreement
(RR Flagging is paid thru agreement 3001-09-BNSF)

Railroad Crossing Work

| | |
|------------------|-------------------|
| Labor | \$ 15,791.00 |
| Materials | \$ 11,390.00 |
| Administration | \$ 299.00 |
| Other | <u>\$ 2718.00</u> |
| Surface Subtotal | \$ 30,198.00 |

Railroad Signal Work

| | |
|-----------------|---------------------|
| Labor | \$142,927.00 |
| Material | \$ 93,862.00 |
| Administration | \$ 2,780.00 |
| Other | <u>\$ 41,188.00</u> |
| Signal Subtotal | \$280,757.00 |

Permanent and Temporary Easement

| | |
|---------------------|-------------------|
| Agreed Cost | \$ 272.56 |
| Application Fee | <u>\$ 2000.00</u> |
| Total Easement cost | \$ 2,272.56 |

Total Cost for Agreement 3100-08-BNSF \$313,227.56

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
STATE OF ARIZONA

LOCATION SURPRISE TO WEST ENNIS

DETAILS OF ESTIMATE

PLAN ITEM : PSI025651J1

VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

REVISED TO NEW PRICING LIST 09/04/03 (THERE WAS NO APPROVED MATERIAL LIST AT THIS TIME.)
REVISED TO NEW PRICING LIST 03/10/03 (THERE WAS NO APPROVED MATERIAL LIST AT THIS TIME.)

INSTALL NEW HOUSE USE EXSISTING (RELOCATE ONE OF EACH) CANTILEVERS AND FLASHERS WITH GATES ADD ONE FLASHER
COMPLETE DUE TO ROAD WIDENING AT GREENWAY RD IN SURPRISE, AZ. L/S 7208, MP 173.45, SOUTHWEST DIV., PHOENIX SUBDIV.,
DOT # 025651J
MONTHLY POWER UTILITIY COST CENTER: 61694

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTIVE PACKAGES USED FOR ESTIMATING PURPOSE ONLY.
THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS, DETAILED AND ACCURATE MATERIAL LISTS WILL BE
FURNISHED WHEN ENGINEERING IS COMPLETED.
CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.
THIS ESTIMATE GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR MATERIAL, LABOR, AND
OVERHEADS.

***** SIGNAL WORK ONLY *****

THE STATE OF ARIZONA IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY

| DESCRIPTION | QUANTITY U/M | COST | TOTAL \$ |
|-------------------------------|--------------|---------|----------|
| ***** LABOR ***** | | | |
| SIGNAL FIELD LABOR - CAP | 1600.0 MH | 41,696 | |
| SIGNAL SHOP LABOR - CAP | 96.0 MH | 2,525 | |
| PAYROLL ASSOCIATED COSTS | | 30,454 | |
| EQUIPMENT EXPENSES | | 13,774 | |
| DA LABOR OVERHEADS | | 47,519 | |
| INSURANCE EXPENSES | | 6,959 | |
| TOTAL LABOR COST | | 142,927 | 142,927 |
| ***** MATERIAL ***** | | | |
| BATTERY | 1.0 EA N | 6,547 | |
| BUNGALOW 6X8 | 1.0 EA N | 9,689 | |
| BUNGALOW MATERIAL | 1.0 LS N | 4,893 | |
| CABLE | 1.0 EA N | 3,750 | |
| CHARGER | 1.0 EA N | 1,379 | |
| CONDUIT, PVC 4", SCH 80 | 140.0 FT N | 546 | |
| ELECTRICAL MTRL | 1.0 EA N | 1,500 | |
| FIELD MATERIAL | 1.0 LS N | 4,060 | |
| FLASHER COMPLETE W/FOUNDATION | 1.0 EA N | 5,993 | |
| FOUNDATION | 3.0 EA N | 1,515 | |
| GATE KEEPER | 3.0 EA N | 5,583 | |
| GATE MECH. MODEL 95 COMPLETE | 3.0 EA N | 22,605 | |
| LAMP RESISTOR | 3.0 EA N | 2,376 | |
| LED LIGHT ADJUSTMENT | 26.0 EA N | 6,266 | |
| LED LIGHT GATE KIT | 3.0 EA N | 1,191 | |
| LIGHT OUT DETECTOR | 1.0 EA N | 891 | |
| PRE-EMPTION MISC. MTRL. | 1.0 EA N | 250 | |
| RECORDER | 1.0 EA N | 5,203 | |
| RELAY, PRE-EMPT W/BASE | 1.0 EA N | 500 | |
| TELLULAR MONITOR | 1.0 EA N | 2,500 | |
| USE TAX | | 5,763 | |
| OFFLINE TRANSPORTATION | | 862 | |
| TOTAL MATERIAL COST | | 93,862 | 93,862 |
| ***** OTHER ***** | | | |
| AC SERVICE | 1.0 EA N | 2,500 | |
| CONCRETE/FOUNDATION CANT. | 1.0 LS N | 1,668 | |
| CONTRACT ENGR. | 1.0 EA N | 6,000 | |
| CONTRACTED FLAGGING | 1.0 EA N | 2,500 | |
| DIRECTIONAL BORE | 1.0 EA N | 2,500 | |

EXHIBIT D-1
PAGE 1 OF 2
AGREEMENT
3100-08-BNSF
DOT 025 651 J
IN SURPRISE, AZ

SURFACE ROCK

30.0 CY N

750

TOTAL OTHER ITEMS COST

15,918

15,918

PROJECT SUBTOTAL

252,707

CONTINGENCIES

25,270

BILL PREPARATION FEE

2,780

GROSS PROJECT COST

280,757

LESS COST PAID BY BNSF

0

TOTAL BILLABLE COST

280,757

EXHIBIT D-1
PAGE 2 OF 2
AGREEMENT 3100-08-BNSF
DOT # 025 651 J
IN SURPRISE, ARIZONA

The Burlington Northern & Santa Fe Railway Company

TO WILLIAMS

TO PHOENIX

EASTWARD APPR.
MPH

WESTWARD APPR.
MPH

120' MIN.

50' MIN.

50' MIN.

GRAND AVE

STOP AND
WAIT 20
SECONDS

GREENWAY ROAD
DOT # 025 651 J

RELOCATE GATE
AND CANTILEVER

INSTALL: RE LOCATE CANTILEVERS, GATES & FLASHERS
ADD FLASHER WITH GATE.
CONTROL DEVICES: UES EXSISTING CONSTANT WARNING

BOLD - IN

OUT

SALVAGE: NONE

- INSTRUMENT HOUSE
- BELL
- METER
- CROSSING CONTROL CONNECTIONS
- BIDIRECTIONAL CROSSING CONTROL
- UNIDIRECTIONAL CROSSING CONTROL
- COUPLER OR TERMINATION
- GUARD RAIL

EXHIBIT D-2
AGREEMENT 3100-08-BNSF
DOT # 025 651 J
IN SURPRISE, ARIZONA

Warning device placement:
Clearance to C.L. Track = Min. 12'
Edge of Road to C.L. Foundation:
Min. 4'3" with curb.
Min. 8'3" without curb.
Max. 12'
25' Min. to Near Rail
30' Min. to Edge of Road
ALL LIGHTS TO BE LED

House Clearance:

BNSF RAILWAY CO.
(LOCATION) SURPRISE, AZ
(STREET) GREENWAY ROAD
LS: 7208
M.P. 173.45
DOT # 025-651-J
DIVISION: SOUTHWEST
SUBDIVISION: PHOENIX
KANSAS CITY
NO SCALE
DATE: 08/28/2009
FILE: 7208173_45.dgn
DDF/DDF

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
ARIZONA DOT

LOCATION EL MIRAGE

DETAILS OF ESTIMATE

PLAN ITEM : 000149474

VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

DESCRIPTION OF PROJECT AS PROVIDED BY PROJECT ENGINEER: MSA
EXTEND EXISTING GREENWAY ROAD CONCRETE CROSSING SURFACE BY 16 FT FOR ADOT GRAND AVE. WIDENING PROJECT. EXTEND BOTH MAIN AND SIDING CROSSING SURFACES

RDM W. AREND

BILLING FOR THIS PROJECT SHOULD BE DIRECTED TO: 100% BILLABLE TO ARIZONA DOT

MAINTAIN PROPRIETARY CONFIDENTIALITY

THE PHYSICAL LIMITS OF THIS PROJECT ARE DESCRIBED BY LINE SEGMENT, MILE POST RANGES, AND IN SOME CASES TRACK NUMBER. THIS IS THE PRIMARY AREA FOR THE PROJECT. THERE WILL BE CASES WHERE WORK MAY OCCUR BEYOND THE DEFINED LIMITS.

PROJECTS THAT INCLUDE SIGNAL, ELECTRICAL, OR TELECOMMUNICATION EQUIPMENT MAY REQUIRE ACTIVITY BEYOND THESE DEFINED TRACK LIMITS. ALL OR PORTIONS OF SOME PROJECTS MAY OCCUR IN AREAS WHERE NO MILEPOST SIGNS EXIST SUCH AS YARDS.

THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

| DESCRIPTION | QUANTITY | U/M | COST | TOTAL \$ |
|--|----------|-------|--------|----------|
| ***** LABOR ***** | | | | |
| PLACE CROSS TIES - CAP | 40.0 | MH | 875 | |
| PLACE PUBLIC CROSSING - CAP | 48.0 | MH | 1,043 | |
| REPLACE SIGNAL BONDING - CAP | 3.0 | MH | 79 | |
| SURFACE TRACK - REPLACEMENT - CAP | 24.0 | MH | 565 | |
| UNLOAD BALLAST - REPLACEMENT - CAP | 24.0 | MH | 540 | |
| UNLOAD CROSS TIES - REPLACEMENT - CAP | 32.0 | MH | 708 | |
| UNLOAD CROSSING MATERIAL - PUBLIC - CAP | 32.0 | MH | 708 | |
| PAYROLL ASSOCIATED COSTS | | | 3,106 | |
| EQUIPMENT EXPENSES | | | 2,616 | |
| DA LABOR OVERHEADS | | | 4,831 | |
| INSURANCE EXPENSES | | | 720 | |
| TOTAL LABOR COST | | | 15,791 | 15,791 |
| ***** MATERIAL ***** | | | | |
| BALLAST, PEDERNAL, NM (SWE, SWW | 50.0 | NT | 369 | |
| TIE, TRK, 10FT, PRE-PLATED, PANDROL, 6IN, ROUND HOLE | 20.0 | EA ** | 2,400 | |
| CONC 136 08-SEC WITH FILLER FOR WOOD | 32.0 | FT ** | 6,631 | |
| CONCRETE XING RAMP AND PANEL RESTRAINT, | 1.0 | ST | 257 | |
| MATERIAL HANDLING | | | 481 | |
| ONLINE TRANSPORTATION | | | 539 | |
| USE TAX | | | 645 | |
| OFFLINE TRANSPORTATION | | | 68 | |
| TOTAL MATERIAL COST | | | 11,390 | 11,390 |
| ***** OTHER ***** | | | | |
| TOTAL OTHER ITEMS COST | | | 0 | 0 |
| PROJECT SUBTOTAL | | | | 27,181 |
| CONTINGENCIES | | | | 2,718 |
| BILL PREPARATION FEE | | | | 299 |
| GROSS PROJECT COST | | | | 30,198 |
| LESS COST PAID BY BNSF | | | | 0 |
| TOTAL BILLABLE COST | | | | 30,198 |

ARIZONA DEPARTMENT OF TRANSPORTATION

UTILITY AND RAILROAD ENGINEERING SECTION

RAILROAD AGREEMENT

Between

**THE STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION**

and

BNSF RAILWAY COMPANY

BNSF

June 28, 2010

AGREEMENT No. 3113-08-BNSF

BNSF Cont No. _____

BNSF File No. 025397J

AGREEMENT TRACS No. 060 MA 139 H6866 01C

CONSTRUCTION TRACS No. 060 MA 139 H6866 01C

CONSTRUCTION PROJECT No. ARRA-060-B(201)A

FEDERAL AID PROJECT No. ARRA-060-B(201)A

HIGHWAY: PHOENIX-WICKENBURG HIGHWAY (US 60)

LOCATION: SR 303 to 99th Avenue Widening

AAR/DOT # 025 397 J at 111th Avenue

Railroad LS 7208 MP 175.79

ADOT ORIGINAL

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| Exhibit A | Print Showing work to be done at the crossing |
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| Exhibit C | BNSF standard document “C” Contractor Requirements |
| Exhibit C-1 | BNSF standard document “C-1” Agreement Between BNSF Railway Company and Contractor |
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| Exhibit D-1 | BNSF Signal Estimate |
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This AGREEMENT is executed to be effective as of this 15th day of July 2010 ("Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("BNSF"), and the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "STATE". All lettered exhibits are incorporated and made a part of this AGREEMENT by reference and attachment regardless of designation or alphabetical order.

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Youngtown, County of Maricopa, State of Arizona; BNSF (predecessor: ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY) and County of Maricopa entered into an Agreement dated the 08th day of June of 1993, , recorded in Maricopa County records at DKT 10260, Pg 1323, which granted the right to construct, maintain and use the highway crossing of the BNSF right-of-way and over its tracks, in Maricopa County, State of Arizona, now designated as AAR/DOT # 025 397 J RRMP 175.79 Phoenix Subdivision. The STATE desires to improve the existing 111th avenue at-grade crossing by widening the roadway and associated at-grade crossing.

The STATE has requested an easement from the BNSF for the right to construct, maintain and use the proposed new highway crossing of the BNSF right-of-way and over its tracks as shown on Exhibit A. The state will pay BNSF the sum of two thousand seven hundred dollars and 74/100 Dollars (\$ 2,700.74) as compensation for the Temporary Construction Easement and Permanent Easement as needed.

The parties hereto desire to express in writing their understanding and agreement with respect to the PROJECT and pursuant to which the crossing, connecting roadways and other improvements are to be constructed and maintained.

DEFINITIONS:

- A. AGREEMENT means this specific AGREEMENT with all attached exhibits together with all attachments incorporated by reference.
- B. AGREEMENT TRACS NO. means the agreement accounting number utilized for ADOT Construction Project, which is 060 MA 139 H6866 01C.
- C. CONSTRUCTION TRACS NO. means the roadway construction accounting number utilized for ADOT Construction Project, which is 060 MA 139 H6866 01C.
- D. CONSTRUCTION PROJECT NO. ARRA-060-B(201)A.
- E. EMERGENCY WORK by BNSF means work of an immediate nature required to maintain the integrity of rail service, restore railroad operations or for the protection of persons or BNSF property.
- F. PROJECT means all 111th Avenue work related to the construction of including, but not limited to, any and all roadway improvements, changes to railroad safety devices and appurtenances, temporary and permanent track work, fencing, communication, signal and electrical lines and appurtenances, grading, both temporary and permanent drainage facilities, signing and striping, modification to utilities, right-of-way acquisition, preliminary and construction engineering, contract preparation, cuts, fills, highway pavement, retaining walls and all highway facilities at the locations shown on the STATE's PROJECT plans and

specifications included herein by reference only. Additionally, temporary controls during construction must be in compliance with Section 8A-5, "Temporary Traffic Control Zones" of the Manual on Uniform Traffic Control Devices, Federal Highway Administration.

- G. RAILROAD WORK means pre-engineering, engineering, management, administration, design, preparation of plans, specifications and estimate, construction labor, materials and equipment called for in the AGREEMENT, and other work mutually agreed upon in the AGREEMENT, including approved changes in scope.

ARTICLE I – SCOPE OF WORK

This project entails construction and modification of the existing at grade crossing at US 60 and 111th Avenue; further identified as AAR/DOT # 025 397 J. Construction of the PROJECT shall include the following RAILROAD WORK performed by BNSF:

1. BNSF will:
 - a. Acquire and/or relocate existing crossing signal equipment as necessary;
 - b. Provide Permanent Easement as shown in Exhibit B-3.
 - c. Provide Temporary Construction Easement as shown in Exhibit B-3.
2. Preliminary engineering, design, contract preparation, and a project coordinator / inspector at STATE's expense as required in connection with the construction of the Project;
3. Flagging services will be paid by the STATE directly to BNSF thru separate agreement 3001-09-BNSF.
4. Procurement of materials, equipment and supplies necessary for the railroad work;

ARTICLE II – BNSF OBLIGATIONS

In consideration of the covenants of STATE set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. In consideration of the faithful performance of the STATE'S covenants contained herein, BNSF hereby grants to STATE, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive easement (hereinafter called, "Temporary Construction Easement") to construct the at grade crossing together with a Permanent Easement to use and maintain said crossing across or upon the portion of BNSF's right-of-way described further on Exhibit B-3, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:
 - (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;

- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate, provided such facilities do not affect the operational integrity of the STATE's at-grade crossing
- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate, provided such use or operations does not affect the operational and structural integrity of the STATE's at-grade crossing
- (d) In the event STATE is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to STATE for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to STATE herein nor shall any subsequent sale or abandonment of said right-of-way.

Provided STATE is in compliance with the terms and conditions of this Agreement, BNSF will grant to STATE, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to construct, use and maintain the at-grade crossing, substantially in the form of Exhibit A and Exhibit B attached to this Agreement. STATE must pay BNSF the sum of two thousand seven hundred and 74/100 Dollars (\$2,700.74) as compensation for the Easement within sixty (60) days of issuing a Notice to Proceed pursuant to Article III, Section 14 of this Agreement after having received an invoice for the same from BNSF. This payment will be received before any construction activities can take place. If STATE fails to pay BNSF within the sixty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

The term of the Temporary Construction Easement begins on the Effective Date and ends upon substantial completion of the at-grade crossing. The Temporary Construction Easement and related rights given by BNSF to STATE in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. In the event STATE is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to STATE for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to STATE herein.

2. BNSF will furnish all labor, materials, tools, and equipment for RAILROAD WORK required for the construction of the PROJECT, such RAILROAD WORK and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the PROJECT has not commenced within six (6) months following the Notice to Proceed, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this AGREEMENT as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this AGREEMENT upon written approval of STATE, which approval will not be unreasonably withheld.

3. BNSF will do all RAILROAD WORK set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.
4. STATE agrees to reimburse BNSF for work of an emergency nature caused by STATE or STATE's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of STATE and STATE agrees to fully reimburse BNSF for all such emergency work, of which BNSF will notify STATE at its earliest opportunity.
5. During the construction of the Project, BNSF will send STATE itemized monthly invoices detailing the costs of the RAILROAD WORK performed by BNSF under this Agreement. Except for the final invoice, monthly invoices shall only be submitted for costs of five hundred dollars (\$500) or more. Within one hundred and twenty (120) days after completion of RAILROAD WORK BNSF will send STATE a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 6 herein, STATE must pay the final invoice within sixty (60) days of the date of the final invoice. Invoices shall include a detailed cost run summary, the appropriate AGREEMENT and CONSTRUCTION TRACS numbers and shall be labeled as "Progress Invoice" or "Final Invoice" as the case may be. Costs shall be accumulated and invoiced in accordance with the Federal Acquisition regulations. The United States Code of Federal Regulations, 23 CFR 646 B is incorporated into this AGREEMENT by reference. Prior to submitting the first invoice to STATE, BNSF will notify STATE, in writing, of the actual BNSF construction start date. BNSF construction start date shall not be prior to receiving a Notice to Proceed from STATE. Prior to submitting the final invoice to STATE, BNSF agrees to notify STATE, in writing, of the actual BNSF construction completion date.
6. BNSF shall be given progress copies of the STATE's PROJECT plans at the 30%, 60% and 95% level, along with a copy of the final PS&E submittal by the STATE's Consultant. BNSF is encouraged to make comments to the STATE's PROJECT plan with regard to BNSF facilities.

ARTICLE III – STATE OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, STATE agrees as follows:

1. STATE will furnish a pdf file of railroad-specific 100% plans and specifications (**in English Units**) for the PROJECT to BNSF. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this AGREEMENT and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the horizontal and vertical clearance standards for structures over BNSF track facilities, and such plans and specifications will not adversely impact BNSF operations. Such approval by BNSF shall not be deemed to mean that the plans and

specifications, or construction, is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.

2. STATE or STATE's Contractor will make any required application and obtain all required permits and approvals for the construction of the PROJECT.
3. STATE will provide for and maintain minimum vertical and horizontal clearances, as required and approved by BNSF as part of the plans and specifications for the PROJECT.
4. STATE will acquire all rights-of-way necessary for the construction of the PROJECT.
5. STATE must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual for installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project. The most recent version of the Utility Accommodation Manual is available on the BNSF website.
6. STATE will construct the PROJECT as shown on the plans referenced pursuant to Exhibit A of this Agreement and do all work provided for in the plans and specifications for the PROJECT, except RAILROAD WORK that will be performed by BNSF hereunder. STATE will furnish all labor, materials, tools and equipment for the performance of STATE's work. The principal elements of STATE's work are as follows:
 - (a) Reconstruction of the at grade crossing
 - (b) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
 - (c) Provide suitable drainage, both temporary and permanent as required for the project;
 - (d) Provide appropriate pedestrian control during construction;
 - (e) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;
7. STATE's work will be performed by STATE or STATE's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.
8. STATE will require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman, in accordance with the requirements of Exhibit C attached hereto. Additionally, STATE will require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property, or near BNSF tracks making reference to BNSF's file number 025397J.

9. STATE will include the following provisions in any contract with its contractor(s) performing work on said PROJECT:
- (a) The contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies, and by field inspection. The contractor shall contact Blue Stake and have all underground facilities in the PROJECT area marked to verify their locations prior to performing any construction activity that may damage such facilities. The contractor will be responsible for contacting BNSF's Engineering Representative Richard Barnitz and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other lines (fiber optic, cable, communication or otherwise) may exist.
 - (b) Failure to mark or identify these Lines will be sufficient cause for BNSF's Engineering Representative at **505-767-6826** to stop construction at no cost to the STATE or BNSF until these items are completed.
 - (c) The contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The contractor must cooperate fully with any telecommunications company (ies) in performing such rearrangements.
 - (d) In addition to the liability terms contained elsewhere in this Agreement, the contractor is hereby required to execute Exhibit C and Exhibit C-1 agreement with BNSF which will require the purchase of railroad protective insurance policy with endorsements requested within the Exhibit C and Exhibit C-1 and in addition, name the state of Arizona as an additional insured. The contractor shall also take full responsibility for their subcontractors through such Exhibit C and Exhibit C-1. The contractor shall further be caused to indemnify, defend and hold harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). To the extent permitted by law; **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO**

**THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY
THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF
BNSF.**

10. STATE will incorporate in each prime contract for construction of the PROJECT, or the specifications therefore, (i) the provisions set forth in Article III, Sections 7, 8, 9 and 11; (ii) the provisions set forth in Article IV, Sections 3 and 4; and (iii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.
11. Except as otherwise provided below in this Section 11, all construction work performed hereunder by STATE for the PROJECT will be pursuant to a contract or contracts to be let by STATE, and all such contracts will include the following:
 - (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
 - (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
 - (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work will have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and (d) If the STATE's contractor defaults his obligation under his contract with the STATE for any reason his replacement shall be responsible to comply with all related obligations to BNSF as contained in the original contract between the STATE and the first contractor. (d) To facilitate scheduling for the Project, STATE shall have its contractor give BNSF's Road Master at 602-708-3593 thirty (30) days advance notice of the proposed times and dates for work windows. BNSF and STATE's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows.
12. If the STATE's contractor defaults his obligation under his contract with the STATE for any reason their replacement shall be responsible to comply with all related obligations to BNSF as contained in the original contract between the STATE and the first contractor.
13. STATE will give BNSF's Manager of Public Projects written Notice to Proceed with the RAILROAD WORK after receipt by the STATE of the Opinion and Order from the Arizona Corporation Commission. BNSF will not begin the RAILROAD WORK (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from STATE.
14. STATE agrees to reimburse BNSF for work of an emergency nature caused by STATE or STATE's contractor in connection with the PROJECT which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be

performed by BNSF without prior approval of STATE; however, STATE reserves the right to review the cause of said work to determine payment responsibilities. If the parties cannot agree on the responsible party of the damages, the matter will be resolved through arbitration pursuant to A.R.S. Section 12-1518.

15. BNSF may charge STATE for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the PROJECT. Such charges will be considered part of the actual cost of the PROJECT, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.
16. **TO THE FULLEST EXTENT PERMITTED BY LAW, STATE HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM (I) THE STATES SOLE USE AND/OR OCCUPANCY OF THE CONSTRUCTION SITE, (II) THE USE, OCCUPANCY OR PRESENCE OF STATE'S CONTRACTORS, TO THE EXTENT THE STATE HAS BREACHED THIS AGREEMENT BY ALLOWING CONTRACTOR AGENTS ONTO RAILROAD PROPERTY WITHOUT SUCH CONTRACTOR AGENTS HAVING AN EXHIBIT C OR EXHIBIT C-1 AGREEMENT EXECUTED IN THE FORM ATTACHED AS EXHIBITS HERETO SIGNED WITH THE RAILROAD, (III) THE SOLE ACTS OR OMISSIONS OF STATE, ITS, OFFICERS OR EMPLOYEES IN, ON, OR ABOUT THE CONSTRUCTION SITE, (V) STATE'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO STATE PURSUANT TO ARTICLE II OF THIS AGREEMENT, (VI) ANY RIGHTS OR INTERESTS GRANTED TO STATE PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VII) STATE'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY STATE, OR (VIII) AN INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF STATE, ITS OFFICERS OR EMPLOYEES BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.**

ARTICLE IV – JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this AGREEMENT will be performed in a good and workmanlike manner and each portion will be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or

modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.

2. STATE will require its contractor(s) to reasonably adhere to the PROJECT's construction schedule for all PROJECT work. The parties hereto mutually agree that BNSF's failure to complete the RAILROAD WORK in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this AGREEMENT by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the RAILROAD WORK in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF-owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct, or indirect, consequences or costs resulting from any such reallocation will not constitute a breach of this AGREEMENT by BNSF. Nevertheless, BNSF shall endeavor to utilize all means at its disposal to comply with the original schedule.
3. BNSF will have the right to stop construction work on the PROJECT if any of the following events take place: (i) STATE (or any of its contractors) performs the PROJECT work in a manner contrary to the plans and specifications approved by BNSF; (ii) STATE (or any of its contractors), in BNSF's opinion, executes the PROJECT work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the PROJECT. (iv) STATE fails to pay BNSF for the Temporary Construction Easement and the Permanent Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by STATE or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until valid acceptable insurance has been delivered to and accepted by BNSF. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. Prior to ordering the stoppage of work BNSF shall communicate such deficiencies to the STATE's Engineer and attempt to seek corrections to such deficiencies. In the event that BNSF desires to stop construction work on the PROJECT, BNSF agrees to notify the STATE's Engineer in writing.
4. STATE shall have the right to request that any BNSF Contractor or any employee of a BNSF Contractor who performs work within STATE right of way and which affects STATE's operations or facilities, be removed from STATE right of way for incompetence, neglect of duty, unsafe conduct or misconduct. In the event BNSF or its Contractor elects not to honor such request, STATE may stop the work within its right of way until the matter has been fully resolved to STATE's satisfaction. Before such action is taken the matter will be attempted to be resolved through the STATE's Engineer if the problem occurs during the initial construction or through the District Permits Supervisor if the problem occurs during a subsequent maintenance effort. STATE shall make the final determination. If the termination of RAILROAD WORK should result in delay claims by ADOT's Contractor, these costs shall be passed to BNSF for payment.

For all RAILROAD WORK or subsequent maintenance work conducted by BNSF within STATE right of way BNSF shall acquire a permit for such activity from the applicable STATE District Permits Office. BNSF shall meet and comply with all provisions of said permit.

5. STATE will supervise and inspect the operations of all STATE contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this AGREEMENT and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by STATE personnel at any time during construction of the PROJECT, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the PROJECT will not proceed until STATE corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify the STATE's Engineer for appropriate corrective action.
6. Pursuant to this section and Article II, Section 3 herein, STATE will, out of funds made available to it for the construction of the PROJECT, reimburse BNSF in full for the actual costs of all work performed by BNSF under this AGREEMENT.
7. All expenses detailed in statements sent to STATE pursuant to Article II, Section 3 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this AGREEMENT by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the PROJECT even though such work may have preceded the date of this AGREEMENT and are included in the overhead rates of BNSF.
8. For projects that are funded by the American Recovery and Reinvestment act (ARRA), STATE and BNSF agree as follows:
BNSF and State agree that all applicable terms of ARRA funding shall be complied with by the party responsible therefore under ARRA; e.g., BNSF shall provide information to STATE including but not limited to labor that is used on the PROJECT. This information will include a summary of personnel, hours, dates and type of work performed on the PROJECT. STATE or its CONTRACTOR will use this information to make all applicable reports, including but, not limited to the Federal Highway Administration on the number of jobs created and/or saved as part of the PROJECT
9. The parties mutually agree that no construction activities for the PROJECT, nor future maintenance of the at grade crossing within twenty-five (25) feet of BNSF's railway once completed, that by mutual agreement of the parties have the potential to impact BNSF facilities and operations within BNSF's right-of-way, will be permitted during the fourth quarter of each calendar year. EMERGENCY WORK will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: (800-832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

10. In addition to the terms and conditions set forth elsewhere in this AGREEMENT, BNSF and STATE agree to the following terms upon completion of construction of the PROJECT:

- (a) Before entering upon BNSF's right-of-way for maintenance purposes, by STATE personnel, STATE shall notify BNSF's Road master. Prior written authorization by BNSF's Manager Public Projects will be required for entry into the BNSF right of way during the fourth quarter of each calendar year. STATE is not obligated to execute BNSF's Exhibit C and Exhibit C-1. STATE will abide by the flagging safety requirements set forth in Exhibit C. If work is contracted, STATE will require its prime contractor(s) to comply with the obligations in favor of BNSF set forth in Exhibit C and Exhibit C-1, as may be revised from time to time.
- (b) It is expressly understood by STATE and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (c) If the State performs alterations or modifications to the at-grade crossing within twenty-five (25) feet of BNSF's railway, then without the use of a contractor the States self insurance shall be accepted and evidenced on a certificate of insurance with the following limits:

Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations
- The coverage shall be primary under the limitations of ARS 41-621 and non-contributing with respect to any insurance

Business Automobile Coverage. This Coverage shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired
- The coverage shall be primary under the limitations of ARS 41-621 and non-contributing with respect to any insurance

Workers Compensation and Employers Liability Coverage including coverage for, but not limited to:

- State's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

The State is allowed to self-insure part or all of the insurance requirements without the prior written consent of Railroad. Any deductible, self-insured retention or other financial responsible for claims shall be covered directly by the state in lieu of insurance.

- (d) That this crossing will be transferred back to Maricopa County at a later date and that a separate agreement will be executed between BNSF, STATE and Maricopa County to transfer ownership, maintenance and easement from STATE to Maricopa County.

11. STATE hereby grants to BNSF, at no cost or expense to BNSF, the right to retain an existing dedicated right of access from STATE's property to BNSF tracks for maintenance purposes.
12. BNSF may, at its expense, make future changes or additions to the railroad components of the at-grade crossing if necessary or desirable, in BNSF's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the highway components of the crossing. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the highway components of the crossing to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the crossing, will be divided between BNSF and STATE in such shares as may be mutually agreed to by the parties hereto, subject to Arizona State Transportation Board approval. Before making any such changes, alterations or reconstruction of the highway facilities that will effect the STATE, BNSF shall provide to the STATE copies of the plans and specifications and receive the STATE's written approval prior to commencing work. BNSF is not required to receive written approval from the STATE prior to performing routine maintenance on non-STATE components.
13. STATE may, at STATE's sole expense, alter or reconstruct the highway components of the at-grade crossing if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction will not encroach further upon the easement limits previously granted to State by BNSF, without obtaining BNSF's prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement.
14. The covenants and provisions of this AGREEMENT are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

15. In the event construction of the PROJECT does not commence within two (2) years of the Effective Date, this AGREEMENT will become null and void. All monies paid to BNSF by STATE for easements/licenses or other fees shall be returned to STATE.
16. BNSF's Manager, Public Projects will be given a notice to proceed when the Opinion and Order has returned from the Arizona Corporation Commission to the STATE. Construction of the PROJECT, on BNSF right-of-way, shall not be commenced until STATE'S contractor shall have given not less than thirty (30) working days prior written notice to BNSF's Manager Public Projects, making reference to BNSF's File Number 025397J which notice shall state the time that operations for construction of the Project, on BNSF right-of-way, shall commence.
17. STATE approval is required for any invoice total which exceeds the cost estimate set forth in Exhibit D plus any approved changes by more than ten percent (10%). Invoices which exceed the original or revised estimated cost by more than ten percent (10%) without prior written approval shall be returned to BNSF pending resolution.
18. If STATE, due to an audit of BNSF's billing sent to STATE has any audit exceptions, STATE and BNSF shall discuss the audit exceptions and agree upon the amount of billing to STATE that is the subject matter of the audit exceptions. If, when doing such review, it is determined by STATE and BNSF that BNSF is to reimburse STATE for any payment already made by STATE to BNSF, BNSF shall make such reimbursement within ninety (90) days after STATE and BNSF have made such determination. Likewise, if it is determined by STATE and BNSF that STATE needs to make any additional payment to BNSF, STATE shall make such additional payment within ninety (90) days after STATE and BNSF have made such determination. If any audit exception(s) cannot be settled by STATE and BNSF through their discussions, the audit exception(s) shall be settled through compromise, arbitration or adjudication as provided in this AGREEMENT
19. This AGREEMENT is subject to the provisions of Chapter 1 of Title 35, Arizona Revised Statutes.
20. BNSF shall comply with all applicable provisions of Executive Order 75-5 and 99-4, "Non-Discrimination in Employment by Government Contractors and Subcontractors".
21. All parties hereby are put on notice that this AGREEMENT is subject to cancellation by the Governor pursuant to A.R.S. § 38-511.
22. In accordance with A.R.S. § 35-214, all books, accounts, reports, files and other records relating to this AGREEMENT shall be subject at reasonable times to inspection and audit by STATE for five (5) years after the receipt of final payment. At STATE's discretion said inspection and audit may be held at BNSF's office during normal business hours. STATE shall conduct its inspection and audit at its expense.
23. This AGREEMENT, including any schedules, exhibits or attachments hereto, constitutes the entire AGREEMENT between the parties, and no understanding or obligation not expressly set forth herein shall be binding upon them. No

modification, amendment or alteration of this AGREEMENT shall be valid unless it is in writing and signed by both parties.

24. This AGREEMENT shall be governed by the laws of the State of Arizona.
25. The waiver by either party of any breach or failure to provide full performance under any of the terms or conditions of this AGREEMENT shall not be construed as a waiver of any other term or condition, or of any subsequent breach of the same or any other term or condition.
26. Any notice provided for or concerning this AGREEMENT shall be in writing and be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:
BNSF's Manager Public Projects
740 East Carnegie Drive
San Bernardino, CA 92408

State of Arizona
Arizona Department of Transportation
Utility & Railroad Section
Attn: Manager
205 South 17th Avenue – Mail Drop 618E
Phoenix, Arizona 85007

27. STATE'S PROJECT plans and specifications for TRACS No. 060 MA 139 H6866 01C are incorporated by reference only.
28. Neither termination nor expiration of this AGREEMENT will release either party from any liability or obligation under this AGREEMENT, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.
29. To the maximum extent possible, each provision of this AGREEMENT will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this AGREEMENT is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.
30. This AGREEMENT (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete AGREEMENT between BNSF and STATE with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

IN WITNESS WHEREOF, STATE has caused this AGREEMENT to be executed and attested by its duly qualified and authorized officials, and BNSF has executed this AGREEMENT, both as of the day and year first above written.

STATE OF ARIZONA

JOHN HALIKOWSKI, DIRECTOR

By: Marcel Benberou

Date: 07/13/2010

Printed Name: MARCEL BENBEROU

Utility and Railroad Engineering Section

ACKNOWLEDGMENT BY STATE

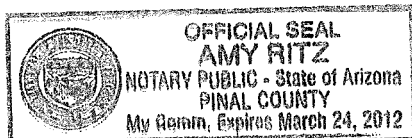
STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 13th day of July, 20 10, by Marcel Benberou the Manager of the Utility & Railroad Engineering Section, Arizona Department of Transportation.

My Commission Expires:

March 24, 2012

Amy Ritz
Notary Public



BNSF RAILWAY COMPANY

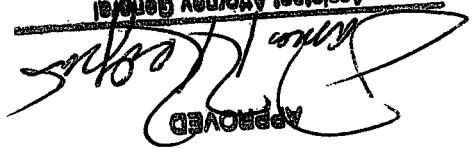
By: Melvin Thomas

Date: 7/15/2010

Printed Name: Melvin Thomas

Title: Mgr Public Projects

08VCH79A

APPROVED

Assistant Attorney General
Attorney for Department
of Transportation
Date 2/1/10

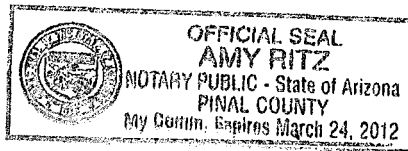
ACKNOWLEDGMENT BY BNSF

STATE OF Arizona)
) ss
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 15th day of July, 2010, by Melvin Thomas, the Manager, Public Projects on behalf of Burlington Northern Santa Fe, a Delaware corporation.

My Commission Expires:
March 24, 2012

Amy Ritz
Notary Public



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| 9 | 060-81201 | 133 | 133 | |

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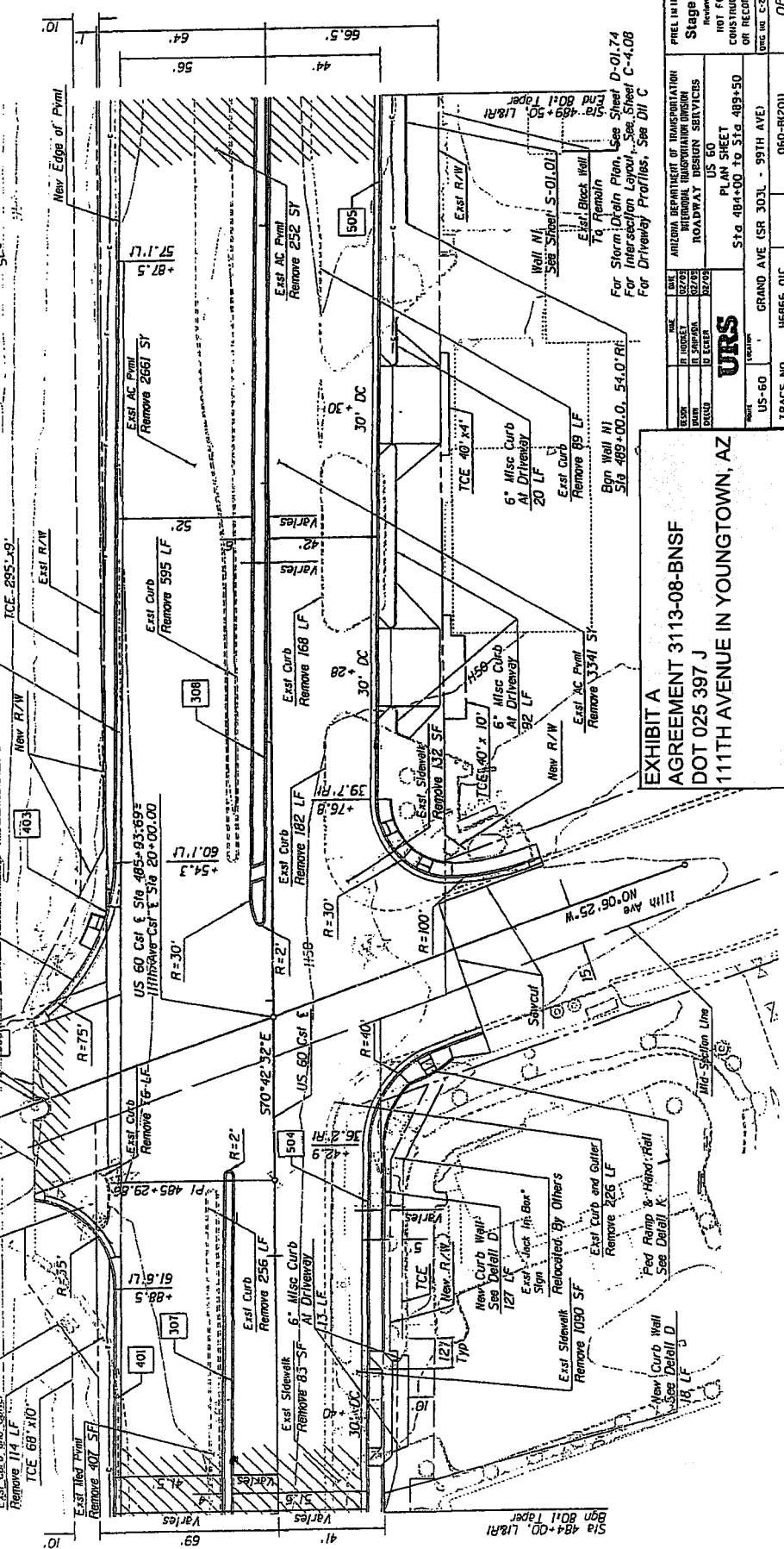
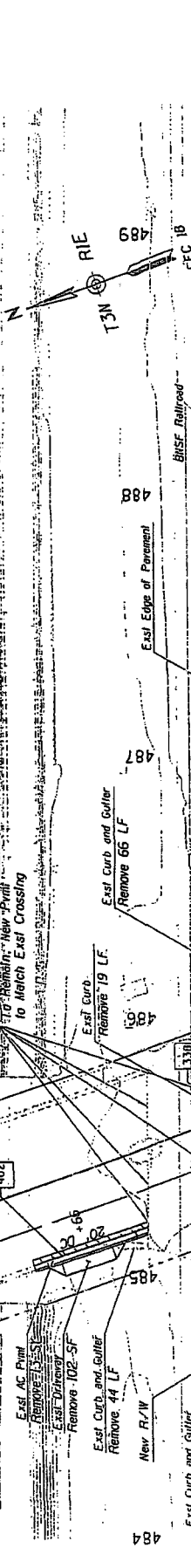


EXHIBIT A
AGREEMENT 3113-08-BNSF
DOT 025 397 J
111TH AVENUE IN YOUNGTOWN, AZ

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| 9 | 060-81201 | 133 | 133 | |

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| DATE | PROJECT NO. | SHEET NO. | TOTAL SHEETS | AS BUILT |
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Exhibit B

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that **BNSF RAILWAY COMPANY**, (formerly known as The Burlington Northern and Santa Fe Railway Company and formerly known as Burlington Northern Railroad Company) a Delaware corporation, whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830, Grantor, for two thousand, seven hundred and 74/100 Dollars (**\$2,700.74**) to it paid by Arizona Department of Transportation, Grantee, and the promises of the Grantee hereinafter specified, does hereby remise, release and quitclaim unto the Grantee, subject to the terms and conditions hereinafter set forth, an **EASEMENT** for the purpose of constructing, maintaining and operating an at-grade crossing and for no other purpose, located at Railroad Mile Post 175.79, hereinafter called at-grade crossing, upon and across the premises, situated in County of Maricopa, State of Arizona, being more particularly described on Exhibit "B-3 (Parcels 2 & 3)", attached hereto and by this reference made a part hereof.

RESERVING, however, unto the Grantor, its successors and assigns, the right to construct, place, operate, maintain, alter, repair, replace, renew, improve and remove communication lines above, below and on the surface of the premises, including, without limitation, transmission by conduit, fiber optics, cable, wire or other means of electricity, voice data, video, digitized information, or other materials or information, pipelines, utility lines, track and facilities including the right of ingress and egress in any such manner as does not unreasonably interfere with Grantee's use of the premises for said Structure, and further reserving unto Grantor, its successors and assigns, all right and privilege of ingress and egress to said premises as Grantor, its successors and assigns may require to investigate and remediate environmental contamination and hazards, and further reserving the right and privilege to use said land for any and all purposes not inconsistent with the use thereof for said Structure.

The foregoing easement is made subject to and upon the following express conditions:

1. To existing interests in the above-described premises to whomsoever belonging and of whatsoever nature and any and all extensions and renewals thereof, including but not limited to underground pipe line or lines, or any type of wire line or lines, if any.
2. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of said Structure shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the

premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing.

3. The Grantee shall bear the cost of removal, relocation or reconstruction of any and all right of way fences, telephone or telegraph poles, or other facilities, the removal, relocation or reconstruction of which may be made necessary by reason of the use of said premises for said Structure purposes.
4. The Grantee shall, at its own cost and expense, make adjustment with industries or other lessees of Grantor for buildings or improvements that may have to be relocated, reconstructed or destroyed by reason of the construction and maintenance of said Structure on said premises.
5. If during the construction or subsequent maintenance of said Structure, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Grantee shall indemnify, protect and defend the Grantor from any and all liability, claims or demands, if any, which arise as a result of exposure and/or removal of said contaminated soils or materials. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.
6. Grantor and Grantee have entered into that certain at-grade Agreement dated as of _____ concerning the Premises (the "At-grade Agreement"). The terms of the Overpass Agreement are incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the Overpass Agreement is, for whatever reason, no longer in effect.
7. The Grantee or its contractor(s) shall telephone Grantor's Communication Network Control Center at **(800) 533-2891** (a 24 hour number) to determine if fiber optic cable is buried anywhere on the premises; and if so, the Grantee or its contractor(s) will contact the Telecommunications Company(ies) involved, and make arrangements with the Telecommunications Company(ies) for protection of the fiber optic cable prior to beginning any work on the premises.
8. If said described premises, or any part thereof, shall for a period of two years cease to be used by said Grantee, or by the public, for the purpose, as aforesaid, or should they be converted to any other use whatsoever, , then and in any such event, all the right, title, interest, benefits and enjoyment of said Grantee, or of the public, in and to said premises, for any purposes whatsoever, shall immediately cease and the said Grantor, its successors and assigns, may, at its or their option, re-enter, retake and hold said described lands and premises as of the present estate of said Grantor without compensation to said Grantee, the public, or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of, or damage

to any premises or the improvements thereon abutting on said easement area or any part thereof.

9. The Grantor does not warrant its title to said premises nor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interest of others, including the tenants and licensees of the Grantor.
10. This easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for public use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

IN WITNESS WHEREOF, the said **BNSF RAILWAY COMPANY** has caused this instrument to be signed by its authorized officer, and the corporate seal affixed on the _____ day of _____, 20____.

BNSF RAILWAY COMPANY

By: _____

General Director-
Land Revenue Management

ATTEST:

By: _____

Assistant Secretary

STATE OF TEXAS)

) ss.

COUNTY OF TARRANT)

I, _____, a Notary Public in and for said County and State, do hereby certify that _____, General Director-Land Revenue Management, of BNSF Railway Company, and _____, Assistant Secretary of said BNSF Railway Company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, and to me personally known to be respectively the General Director-Land Revenue Management and Assistant Secretary of said corporation, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of said corporation, being thereunto duly authorized for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____,
20__.

Notary Public

My commission expires: _____

EXHIBIT "B-1"

Memorandum of Easement

THIS MEMORANDUM OF EASEMENT is hereby executed this ____ day of _____, 20____, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and Arizona Department of Transportation, a political subdivision ("**Grantee**"), whose address for purposes of this instrument is 205 S 17th Avenue, Phoenix Arizona 85009, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Maricopa County, Arizona as described on **Exhibit " B"** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____ (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

[Signature page follows]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

_____,

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____ (name) as _____ (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

Notary Public

(Seal)

My appointment expires: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20____, by
_____(name) as _____(title) of
_____, a _____.

Notary Public

(Seal)

My appointment expires: _____

DESCRIPTION FOR NEW RIGHT OF WAY

BNSF Railway Company

Parcel No. 1:

That portion of the existing railroad right of way of the BNSF Railway Company in the Southeast quarter (SE¼) of Section 2, Township 3 North, Range 1 West, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

Commencing at a Maricopa County (MC) aluminum cap stamped 'RLS 36563' marking the South quarter corner of said Section 2, being North 89°27'48" West 2631.29 feet from a City of El Mirage brass cap stamped 'BM 31-14' marking the Southeast corner of said Section 2;

thence along the South line of said Section 2 South 89°27'48" East 924.20 feet to the existing right of way line common to US Highway 60 (WICKENBURG-PHOENIX HIGHWAY) and the B.N.S.F. Railroad;

thence along said existing right of way line common to US Highway 60 and B.N.S.F. Railroad North 46°37'39" West 40.81 feet to the POINT OF BEGINNING;

thence continuing along said common existing right of way line North 46°37'39" West 24.22 feet to the existing southeasterly right of way line of Greenway Road;

thence along said existing southeasterly right of way line of Greenway Road North 43°22'21" East 5.00 feet;

thence South 46°37'39" East 24.22 feet;

thence South 43°22'21" West 5.00 feet to the POINT OF BEGINNING.

Parcel No. 2:

That portion of said existing railroad right of way of the BNSF Railway Company in the Northwest quarter (NW¼) of Section 18, Township 3 North, Range 1 East, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

(continued)

EXHIBIT B-2
PAGE 1 OF 3 (PARCEL 2)
AGREEMENT 3118-08-BNSF
DOT # 025 397 J
IN YOUNGTOWN, AZ

Commencing at a P.K. nail marking the South quarter corner of said Section 18, being South 00°19'51" West 5264.39 feet from the unmonumented North quarter corner of said Section 18, from which a Witness Corner to said unmonumented quarter corner, marked by an aluminum cap stamped "WC LS 21080", bears South 88°58'34" West 30.00 feet;

thence along the North-South mid section line of said Section 18 North 00°19'51" East 3912.09 feet to said existing right of way line common to US Highway 60 and B.N.S.F. Railroad;

thence along said existing right of way line common to US Highway 60 and B.N.S.F. Railroad North 70°42'50" West 179.42 feet to the existing westerly right of way line of 111th Avenue;

thence along said existing westerly right of way line of 111th Avenue North 19°17'10" East 2.30 feet;

thence continued along said existing westerly right of way line of 111th Avenue South 70°42'50" East 10.00 feet;

thence continued along said existing westerly right of way line of 111th Avenue, along a curve to the Left, having a radius of 60.00 feet, a length of 15.76 feet to the POINT OF BEGINNING;

thence North 73°22'00" East 42.74 feet to said existing westerly right of way line of 111th Avenue;

thence along said existing westerly right of way line of 111th Avenue, from a Local Tangent Bearing of South 52°30'06" West, along a curve to the Right, having a radius of 60.00 feet, a length of 43.70 feet to the POINT OF BEGINNING.

Parcel No. 3:

That portion of said existing railroad right of way of the BNSF Railway Company in the Northeast quarter (NE¼) of Section 18, Township 3 North, Range 1 East, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

Commencing at said South quarter corner of Section 18;

thence along said North-South mid section line of Section 18 North 00°19'51" East 3957.36 feet to said existing easterly right of way line of 111th Avenue;

(continued)

EXHIBIT B-2
PAGE 2 OF 3 (SHOWING PARCEL 2 & 3)
AGREEMENT 3118-08-BNSF
DOT # 025 397 J
IN YOUNGTOWN, ARIZONA

thence along said existing easterly right of way line of 111th Avenue, from a Local Tangent Bearing of South 00°19'51" West, along a curve to the Left, having a radius of 60.00 feet, a length of 19.47 feet to the POINT OF BEGINNING;

thence continuing along said existing easterly right of way line of 111th Avenue, from a Local Tangent Bearing of South 18°15'38" East, having a radius of 60.00 feet, a length of 52.92 feet;

thence North 43°31'46" West 51.22 feet to the POINT OF BEGINNING.

Parcel No. 4:

That portion of said Northeast quarter (NE¼) of Section 18 described as follows:

Commencing at said South quarter corner of Section 18;

thence along said North-South mid section line of Section 18 North 00°19'51" East 3907.65 feet to said existing right of way line common to US Highway 60 and B.N.S.F. Railroad;

thence along said existing right of way line common to US Highway 60 and B.N.S.F. Railroad South 70°42'50" East 50.60 feet to the POINT OF BEGINNING on the existing easterly right of way line of 111th Avenue;

thence along said existing easterly right of way line of 111th Avenue North 19°17'10" East 2.00 feet;

thence South 70°42'50" East 586.93 feet;

thence South 19°17'10" West 2.00 feet to said existing right of way line common to US Highway 60 and B.N.S.F. Railroad;

thence along said existing right of way line common to US Highway 60 and B.N.S.F. Railroad North 70°42'50" West 586.93 feet to the POINT OF BEGINNING.

Parcel No. 5:

That portion of said Northeast quarter (NE¼) of Section 18 described as follows:

(continued)

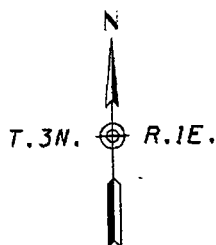
EXHIBIT B-2
PAGE 3 OF 3 (SHOWING END OF PARCEL 3)
AGREEMENT 3118-08-BNSF
DOT 025 397 J
IN YOUNGTOWN, ARIZONA

PARCEL EXHIBIT SHEET TO OBTAIN BNSF PERMANENT RIGHT OF ENTRY

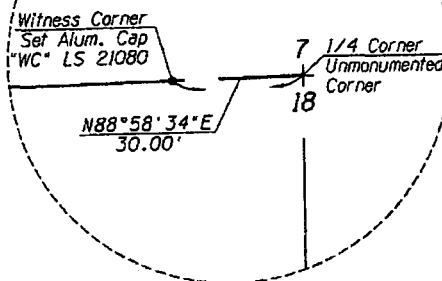
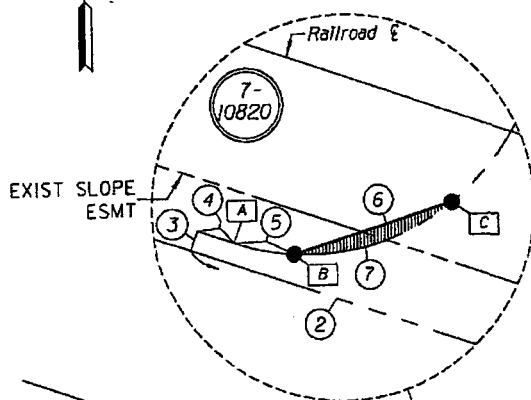
| TRACS NO : 060 MA 139 H6866 01R FED ID : UNASSIGNED | PARCEL NUMBER 7-10820 | TOTAL AREA | AREA REQUIRED | | | REMAINDER | |
|--|-----------------------------|---------------|--------------------------------------|------------------------------------|------------------|-----------|-------|
| | | | GROSS INCLUDING (EXISTING R/W) | NET EXCLUDING (EXISTING R/W) | NEW EASEMENTS | LEFT | RIGHT |
| | | | | 113 | | | |

Note:
For R/W Information not shown on
this exhibit, see ADOT R/W Plans
Project No. 060 MA 139 H6866 01R

ALL AREAS ARE IN SQUARE FEET UNLESS OTHERWISE NOTED



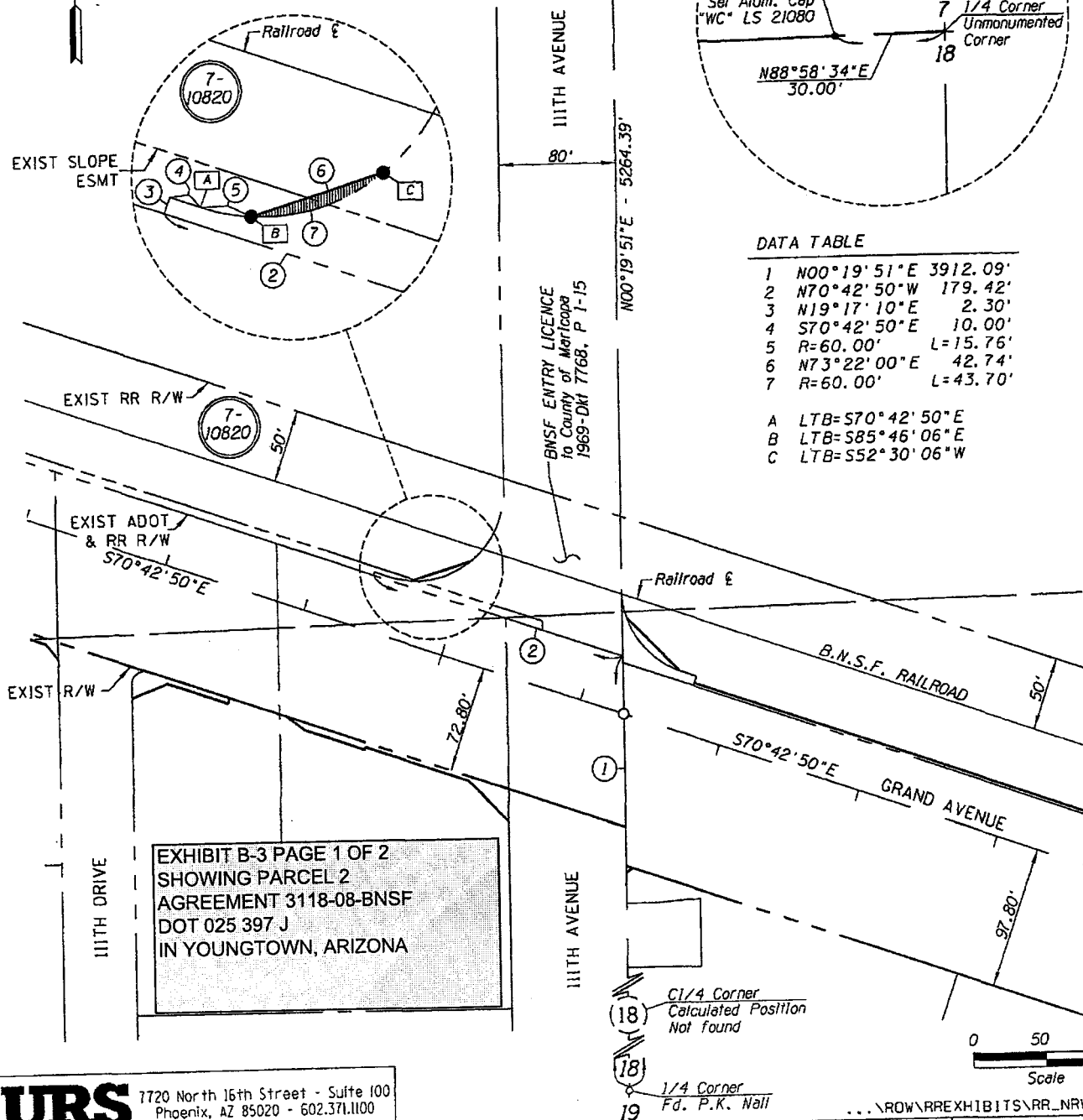
New R/W Area



DATA TABLE

| | | |
|---|-------------|----------|
| 1 | N00°19'51"E | 3912.09' |
| 2 | N70°42'50"W | 179.42' |
| 3 | N19°17'10"E | 2.30' |
| 4 | S70°42'50"E | 10.00' |
| 5 | R=60.00' | L=15.76' |
| 6 | N73°22'00"E | 42.74' |
| 7 | R=60.00' | L=43.70' |

A LTB=S70°42'50"E
B LTB=S85°46'06"E
C LTB=S52°30'06"W



URSA

7720 North 16th Street - Suite 100
Phoenix, AZ 85020 - 602.371.1100

BNSF PARCEL EXHIBIT NO.2

5/1/2009
6:13:38 AM

Sheet 2 of 6

PARCEL EXHIBIT SHEET TO OBTAIN BNSF PERMANENT RIGHT OF ENTRY

TRACS NO :
060 MA 139 H6866 01R
FED ID :
UNASSIGNED

PARCEL
NUMBER
7-10820

TOTAL
AREA

GROSS
INCLUDING
(EXISTING R/W)

AREA REQUIRED
NET
EXCLUDING
(EXISTING R/W)

NEW
EASEMENTS

REMAINDER

LEFT


RIGHT

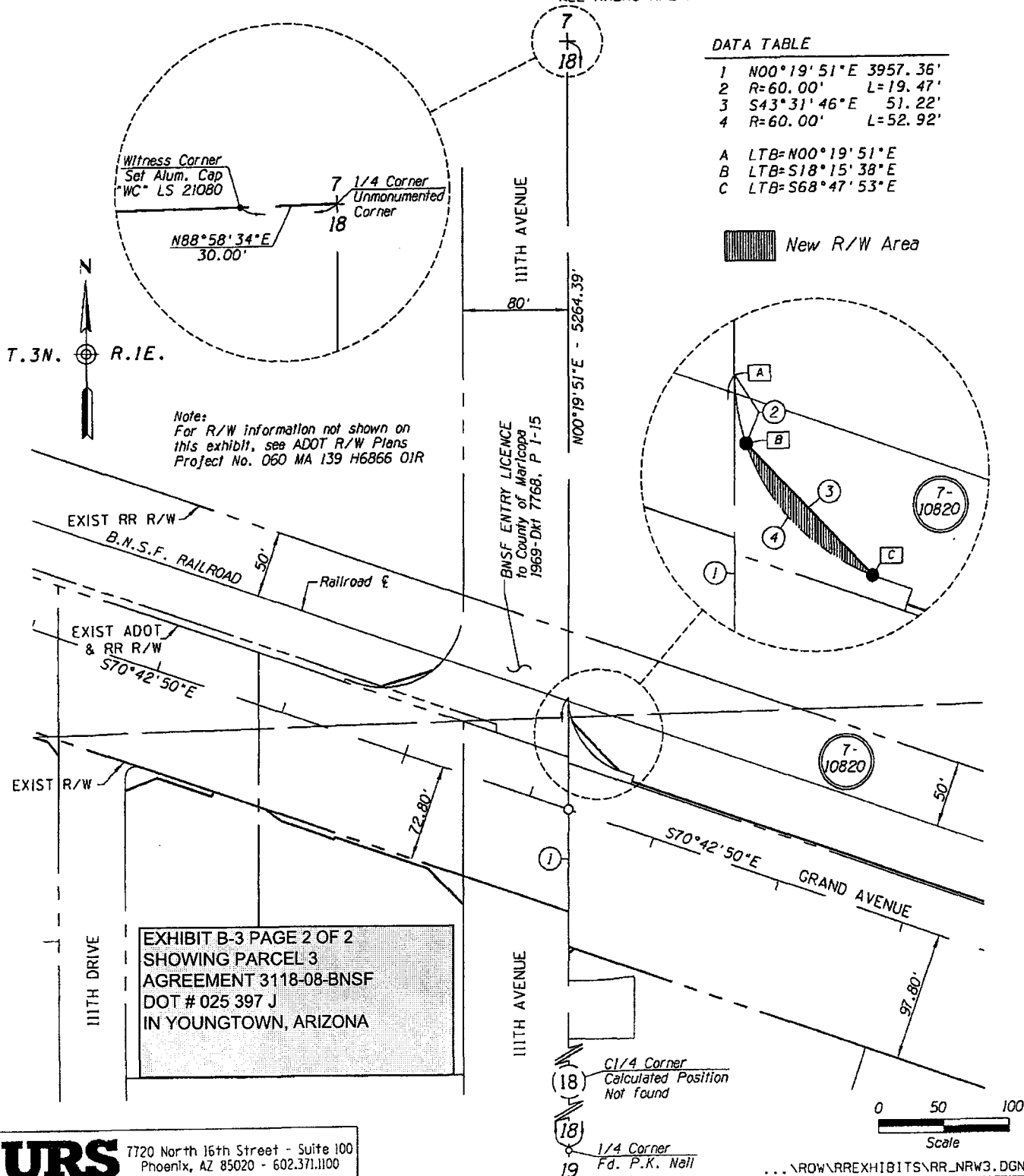
ALL AREAS ARE IN SQUARE FEET UNLESS OTHERWISE NOTED

DATA TABLE

| | | |
|---|-------------|----------|
| 1 | N00°19'51"E | 3957.36' |
| 2 | R=60.00' | L=19.47' |
| 3 | S43°31'46"E | 51.22' |
| 4 | R=60.00' | L=52.92' |

| | |
|---|-----------------|
| A | LTB=N00°19'51"E |
| B | LTB=S18°15'38"E |
| C | LTB=S68°47'53"E |

 New R/W Area



BNSF PARCEL EXHIBIT NO.3

5/1/2009
6:13:59 AM

Sheet 3 of 6

EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of US 60/ Grand Avenue widening from SR 303 to 99th Avenue (060 MA 139 H6866 01C); specifically at US 60 and 111th Avenue at grade crossing AAR/DOT # 025 397 J.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify the Arizona DOT and Railway's Manager Public Projects, telephone number (909)386-4472 at least thirty (30) calendar days before commencing any work on Railway Property. Contractors notification to Railway, must refer to Railroad's file 025397J.

- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Superintendent at (602) 382-5828 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts

- 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained: [Note to Drafter: The vertical clearance should mirror the final negotiated design clearance]
 - 25' Horizontally from centerline of nearest track
 - 23'-3 1/2" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the Arizona DOT and must not be undertaken until approved in writing by the Railway, and until the Arizona DOT has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by the Arizona DOT for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services on railroad property under this Agreement.

The background screening shall at a minimum meet the criteria defined by the e-RAILSAFE program outlined at <http://www.e-railsafe.com> in addition to any other applicable regulatory requirements. The e-RAILSAFE program uses rail industry background screening standards.

Contractor shall obtain consent from all employees screened in compliance with the e-RAILSAFE program criteria to release completed background information to BNSF. Contractor shall be subject to periodic audit to ensure compliance.

Contractor shall not permit any of its employees, subcontractors or agents to perform services on property hereunder who are not approved under e-RAILSAFE program standards. Railroad shall have the right to deny entry onto its premises to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth for the e-RAILSAFE program or who pose a threat, in Railroad's reasonable opinion, to the safety or security of Railroad's operations.

Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster (602) 382-5803 a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
 - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

- **1.05.03c** The cost of flagger services provided by the Railway will be borne by the Arizona DOT. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

- **1.05.03d** The average train traffic on this route is _____ freight trains per 24-hour period at a timetable speed of _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with

permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILROAD'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative (505-767-6826). All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or

protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather _____
(if non-Railway location)
5. Social Security # _____
6. Name (last, first, mi) _____
7. Address: Street: _____ City: _____ St. _____ Zip: _____
8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.): _____
12. Treatment:
 ? First Aid Only
 ? Required Medical Treatment
 ? Other Medical Treatment
13. Dr. Name _____ 30. Date: _____
14. Dr. Address:
 Street: _____ City: _____ St: _____ Zip: _____
15. Hospital Name: _____
16. Hospital Address:
 Street: _____ City: _____ St: _____ Zip: _____
17. Diagnosis: _____

**FAX TO
RAILWAY AT (817) 352-7595
AND COPY TO
RAILWAY ROADMASTER FAX**

EXHIBIT "C-1"

**Agreement
Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR**

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: 025397J

Agency Project: US 60/ Grand Avenue widening from SR 303 to 99th Avenue (060 MA 139 H6866 01C);
specifically at US 60 and 111th Avenue at grade crossing AAR/DOT # 025 397 J

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 200_, [***Drafter's Note: insert the date of the contract between the Agency and the Contractor here] with Arizona DOT for the performance of certain work in connection with the following project _____ . Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for Arizona DOT (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or

in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railroad to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILROAD FOR RAILROAD'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to *Railroad* payments related to the Federal Employers Liability Act or a *Railroad* Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Arizona's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Agreement

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railroad** for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by **Railroad**. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and **Railroad** must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming **Railroad** as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of **Railroad**. If granted by **Railroad**, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this **Agreement**, be covered by contractor's insurance will be covered as if contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-766-2299

Any insurance policy must be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this **Agreement** has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this **Agreement**. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, **Railroad** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming **Railroad** as an additional insured, and requiring that the subcontractor release, defend and indemnify **Railroad** to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify **Railroad** herein.

Failure to provide evidence as required by this section will entitle, but not require, **Railroad** to terminate this **Agreement** immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this **Agreement**. Damages recoverable by **Railroad** will not be limited by the amount of the required insurance coverage.

For purposes of this section, **Railroad** means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, , including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay for certain trains may be \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Field Engineering representative (505-767-6826) four (4) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Manager Public Projects

Contact Person: _____
Address: _____

Accepted and effective this ____ day of 20__.

City: _____ State: ____ Zip: ____
Fax: _____
Phone: _____
E-mail: _____

Exhibit D

TRACS 060 MA 139 H6866 01C
Project ARRA-060-B(201)A
Agreement 3013-08-BNSF
BNSF LS 7208, Rail Mile 175.79, Phoenix Subdivision
Signal work at US 60/111th Avenue
DOT # 025 397 J

Summary of Costs to be paid by STATE thru this agreement
(RR Flagging is paid thru agreement 3001-09-BNSF)
(There is no Surface Work)

Railroad Signal Work

| | |
|-----------------|--------------|
| Labor | \$ 13,458.00 |
| Material | \$ 1,081.00 |
| Administration | \$ 1,613.00 |
| Other | \$ 00.00 |
| Signal Subtotal | \$ 16,152.00 |

Permanent and Temporary Easement

| | |
|---------------------|-------------|
| Agreed Cost | \$ 700.74 |
| Application Fee | \$ 2,000.00 |
| Total Easement cost | \$ 2,700.74 |

Total Cost for Agreement 3013-08-BNSF \$ 18,852.74

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
STATE OF ARIZONA

| LOCATION | SUN CITY | DETAILS OF ESTIMATE | PLAN ITEM : PSI025397J | VERSION : 1 |
|----------|----------|---------------------|------------------------|-------------|
|----------|----------|---------------------|------------------------|-------------|

PURPOSE, JUSTIFICATION AND DESCRIPTION

RELOCATE FLASHER WITH GATE DUE TO ROAD WIDENING AT 111TH AVE IN SUN CITY, AZ. SOUTHWEST DIV., PHOENIX SUBDIV., L/S
7208, M.P. 175.79, DOT # 025397J

MONTHLY POWER UTILITY COST CENTER : XXXXX

CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.
THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND
OVERHEAD.

MAINTAIN PROPRIETARY CONFIDENTIALITY.

REVISED TO NEW PRICING LIST 09/04/03

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSE ONLY.
THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS, DETAILED AND ACCURATE MATERIAL LISTS WILL BE
FURNISHED WHEN ENGINEERING IS COMPLETED.

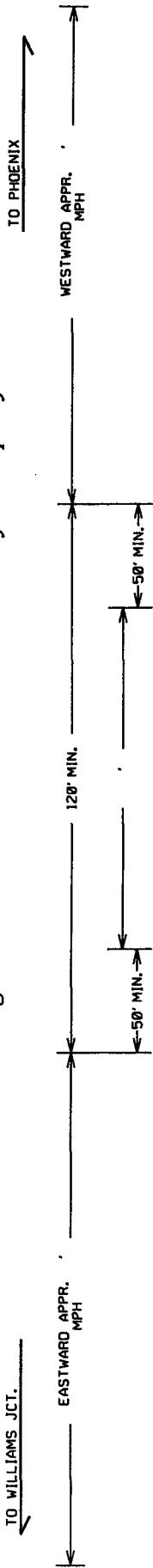
***** SIGNAL WORK ONLY *****

THE STATE OF ARIZONA IS FUNDING THIS PROJECT 100%.

| DESCRIPTION | QUANTITY | U/M | COST | TOTAL \$ |
|--------------------------|----------|------|--------|----------|
| ***** | | | | |
| LABOR | | | | |
| ***** | | | | |
| SIGNAL FIELD LABOR - CAP | 160.0 | MH | 4,170 | |
| PAYROLL ASSOCIATED COSTS | | | 2,868 | |
| EQUIPMENT EXPENSES | | | 1,292 | |
| DA LABOR OVERHEADS | | | 4,461 | |
| INSURANCE EXPENSES | | | 667 | |
| TOTAL LABOR COST | | | 13,458 | 13,458 |
| ***** | | | | |
| MATERIAL | | | | |
| ***** | | | | |
| CABLE | 1.0 | LS N | 500 | |
| FOUNDATION | 1.0 | EA N | 505 | |
| USE TAX | | | 66 | |
| OFFLINE TRANSPORTATION | | | 10 | |
| TOTAL MATERIAL COST | | | 1,081 | 1,081 |
| ***** | | | | |
| OTHER | | | | |
| ***** | | | | |
| TOTAL OTHER ITEMS COST | | | 0 | 0 |
| PROJECT SUBTOTAL | | | | 14,539 |
| CONTINGENCIES | | | | 1,453 |
| BILL PREPARATION FEE | | | | 160 |
| GROSS PROJECT COST | | | | 16,152 |
| LESS COST PAID BY BNSF | | | | 0 |
| TOTAL BILLABLE COST | | | | 16,152 |

EXHIBIT D-1
AGREEMENT 3118-08-BNSF
DOT 025 397 J
IN YOUNGTOWN, ARIZONA

The Burlington Northern & Santa Fe Railway Company



111TH AVE.
DOT # 025 397 J

RELOCATE : SOUTH BOUND GATES

BOLD - IN

OUT

SALVAGE: NONE

EXHIBIT D-2
AGREEMENT 3118-08-BNSF
DOT 025 397 J
In Youngtown, Arizona

- INSTRUMENT HOUSE
- BELL
- METER
- CROSSING CONTROL CONNECTIONS
- BIDIRECTIONAL CROSSING CONTROL
- UNIDIRECTIONAL CROSSING CONTROL
- COUPLER OR TERMINATION
- GUARD RAIL

Warning device placement:
Clearance to C.L. Track = Min. 12'
Edge of Road to C.L. Foundation:
Min. 4'3" with curb,
Min. 8'3" without curb,
Max. 12'
House Clearance:
25' Min. to Near Rail
30' Min. to Edge of Road
ALL LIGHTS TO BE LED

BNSF RAILWAY CO.
(LOCATION) SUN CITY, AZ
(STREET) 111TH. AVE.
LS: 7208
M.P. 175.79
DOT # 025-397-J
DIVISION: SOUTHWEST
SUBDIVISION: PHOENIX
KANSAS CITY
NO SCALE
DATE: 07/14/2009
FILE: 7208175.79.dgn
DDF/DDF

ARIZONA DEPARTMENT OF TRANSPORTATION

UTILITY AND RAILROAD ENGINEERING SECTION

RAILROAD AGREEMENT

Between

**THE STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION**

and

BNSF RAILWAY COMPANY

BNSF

June 28, 2010

AGREEMENT No. 3114-08-BNSF

BNSF Cont No. _____

BNSF File No. 025398R

AGREEMENT TRACS No. 060 MA 139 H6866 01C

CONSTRUCTION TRACS No. 060 MA 139 H6866 01C

CONSTRUCTION PROJECT No. ARRA-060-B(201)A

FEDERAL AID PROJECT No. ARRA-060-B(201)A

HIGHWAY: PHOENIX-WICKENBURG HIGHWAY (US 60)

LOCATION: SR 303 to 99th Avenue Widening

AAR/DOT # 025 398 R at 107th Avenue

Railroad LS 7208 MP 176.33

ADOT ORIGINAL

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| Exhibit A | Print Showing work to be done at the crossing |
| Exhibit B | Easement |
| Exhibit B-1 | Memorandum of Easement. |
| Exhibit B-2 | Legal Description provided by STATE |
| Exhibit B-3 | Print showing limits of the required easement from BNSF that State needs to construct the PROJECT |
| Exhibit C | BNSF standard document “C” Contractor Requirements |
| Exhibit C-1 | BNSF standard document “C-1” Agreement Between BNSF Railway Company and Contractor |
| Exhibit D | Summary Of Costs To Be Paid By This AGREEMENT from STATE to BNSF |
| Exhibit D-1 | BNSF Signal Estimate |
| Exhibit D-2 | BNSF Signal Plan |

This AGREEMENT is executed to be effective as of this 15th day of July 2010, ("Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("BNSF"), and the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "STATE". All lettered exhibits are incorporated and made a part of this AGREEMENT by reference and attachment regardless of designation or alphabetical order.

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Youngtown, County of Maricopa, State of Arizona; BNSF (predecessor: ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY) and County of Maricopa entered into an Agreement dated the 30th day of March of 1973, recorded in Maricopa County records at DKT 10113, Pg 441 which granted the right to construct, maintain and use the highway crossing of the BNSF right-of-way and over its tracks, in Maricopa County, State of Arizona, now designated as AAR/DOT # 025 398 R RRMP 176.33 Phoenix Subdivision. The STATE desires to improve the existing Highway 60 at-grade crossing by widening the roadway and associated at-grade crossing.

The STATE has requested an easement from the BNSF for the right to construct, maintain and use the proposed new highway crossing of the BNSF right-of-way and over its tracks as shown on Exhibit B-3. The state will pay BNSF the sum of Three thousand, six hundred seventy five and 86/100 Dollars (\$3,675.86) as compensation for the Temporary Construction Easement and Permanent Easement as needed.

The parties hereto desire to express in writing their understanding and agreement with respect to the PROJECT and pursuant to which the crossing, connecting roadways and other improvements are to be constructed and maintained.

DEFINITIONS:

- A. AGREEMENT means this specific AGREEMENT with all attached exhibits together with all attachments incorporated by reference.
- B. AGREEMENT TRACS NO. means the agreement accounting number utilized for ADOT Construction Project, which is 060 MA 139 H6866 01C.
- C. CONSTRUCTION TRACS NO. means the roadway construction accounting number utilized for ADOT Construction Project, which is 060 MA 139 H6866 01C.
- D. CONSTRUCTION PROJECT NO. ARRA-060-B(201)A.
- E. EMERGENCY WORK by BNSF means work of an immediate nature required to maintain the integrity of rail service, restore railroad operations or for the protection of persons or BNSF property.
- F. PROJECT means all 107th Avenue work related to the construction of including, but not limited to, any and all roadway improvements, changes to railroad safety devices and appurtenances, temporary and permanent track work, fencing, communication, signal and electrical lines and appurtenances, grading, both temporary and permanent drainage facilities, signing and striping, modification to utilities, right-of-way acquisition, preliminary and construction engineering, contract preparation, cuts, fills, highway pavement, retaining walls and all highway facilities at the locations shown on the STATE's PROJECT plans and

specifications included herein by reference only. Additionally, temporary controls during construction must be in compliance with Section 8A-5, "Temporary Traffic Control Zones" of the Manual on Uniform Traffic Control Devices, Federal Highway Administration.

- G. RAILROAD WORK means pre-engineering, engineering, management, administration, design, preparation of plans, specifications and estimate, construction labor, materials and equipment called for in the AGREEMENT, and other work mutually agreed upon in the AGREEMENT, including approved changes in scope.

ARTICLE I – SCOPE OF WORK

This project entails construction and modification of the existing at-grade crossing at 107th Avenue; further identified as AAR/DOT # 025 398 R. Construction of the PROJECT shall include the following RAILROAD WORK performed by BNSF:

1. BNSF will:
 - a. Acquire and/or relocate existing crossing signal equipment as necessary;
 - b. Provide Permanent Easement as shown in Exhibit B 3.
 - c. Provide Temporary Construction Easement as shown in Exhibit B3.
2. Preliminary engineering, design, contract preparation, and a project coordinator / inspector at STATE's expense as required in connection with the construction of the Project;
3. Flagging services will be paid by the STATE directly to BNSF thru separate agreement 3001-09-BNSF.
4. Procurement of materials, equipment and supplies necessary for the railroad work;

ARTICLE II – BNSF OBLIGATIONS

In consideration of the covenants of STATE set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. In consideration of the faithful performance of the STATE'S covenants contained herein, BNSF hereby grants to STATE, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive easement (hereinafter called, "Temporary Construction Easement") to construct the at-grade crossing together with a Permanent Easement to use and maintain said crossing across or upon the portion of BNSF's right-of-way described further on Exhibit B 3, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:
 - (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;

- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate, provided such facilities do not affect the operational integrity of the STATE's at-grade crossing
- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate, provided such use or operations does not affect the operational and structural integrity of the STATE's at-grade crossing

In the event STATE is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to STATE for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to STATE herein nor shall any subsequent sale or abandonment of said right-of-way.

Provided STATE is in compliance with the terms and conditions of this Agreement, BNSF will grant to STATE, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to construct, use and maintain the at-grade crossing, substantially in the form of Exhibit B and Exhibit B-3 attached to this Agreement. STATE must pay BNSF the sum of Three thousand six hundred seventy five and 86/100 Dollars (\$3,675.86) as compensation for the Easement within sixty (60) days of issuing a Notice to Proceed pursuant to Article III, Section 13 of this Agreement after having received an invoice for the same from BNSF. This payment will be received before any construction activities can take place. If STATE fails to pay BNSF within the sixty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

The term of the Temporary Construction Easement begins on the Effective Date and ends upon substantial completion of the at-grade crossing. The Temporary Construction Easement and related rights given by BNSF to STATE in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. In the event STATE is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to STATE for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to STATE herein.

2. BNSF will furnish all labor, materials, tools, and equipment for RAILROAD WORK required for the construction of the PROJECT, such RAILROAD WORK and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the PROJECT has not commenced within six (6) months following the Notice to Proceed, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this AGREEMENT as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this AGREEMENT upon written approval of STATE, which approval will not be unreasonably withheld.

3. BNSF will do all RAILROAD WORK set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.
4. STATE agrees to reimburse BNSF for work of an emergency nature caused by STATE or STATE's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of STATE and STATE agrees to fully reimburse BNSF for all such emergency work, of which BNSF will notify STATE at its earliest opportunity.
5. During the construction of the Project, BNSF will send STATE itemized monthly invoices detailing the costs of the RAILROAD WORK performed by BNSF under this Agreement. Except for the final invoice, monthly invoices shall only be submitted for costs of five hundred dollars (\$500) or more. Within one hundred and twenty (120) days after completion of RAILROAD WORK BNSF will send STATE a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 6 herein, STATE must pay the final invoice within sixty (60) days of the date of the final invoice. Invoices shall include a detailed cost run summary, the appropriate AGREEMENT and CONSTRUCTION TRACS numbers and shall be labeled as "Progress Invoice" or "Final Invoice" as the case may be. Costs shall be accumulated and invoiced in accordance with the Federal Acquisition regulations. The United States Code of Federal Regulations, 23 CFR 646 B is incorporated into this AGREEMENT by reference. Prior to submitting the first invoice to STATE, BNSF will notify STATE, in writing, of the actual BNSF construction start date. BNSF construction start date shall not be prior to receiving a Notice to Proceed from STATE. Prior to submitting the final invoice to STATE, BNSF agrees to notify STATE, in writing, of the actual BNSF construction completion date.
6. BNSF shall be given progress copies of the STATE's PROJECT plans at the 30%, 60% and 95% level, along with a copy of the final PS&E submittal by the STATE's Consultant. BNSF is encouraged to make comments to the STATE's PROJECT plan with regard to BNSF facilities.

ARTICLE III – STATE OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, STATE agrees as follows:

1. STATE will furnish a pdf file of railroad-specific 100% plans and specifications (**in English Units**) for the PROJECT to BNSF. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this AGREEMENT and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the horizontal and vertical clearance standards for structures over BNSF track facilities, and such plans and specifications will not adversely impact BNSF operations. Such approval by BNSF shall not be deemed to mean that the plans and

specifications, or construction, is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.

2. STATE or STATE's Contractor will make any required application and obtain all required permits and approvals for the construction of the PROJECT.
3. STATE will provide for and maintain minimum vertical and horizontal clearances, as required and approved by BNSF as part of the plans and specifications for the PROJECT.
4. STATE will acquire all rights-of-way necessary for the construction of the PROJECT.
5. STATE must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual for installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project. The most recent version of the Utility Accommodation Manual is available on the BNSF website.
6. STATE will construct the PROJECT as shown on the plans referenced pursuant to Exhibit A of this Agreement and do all work provided for in the plans and specifications for the PROJECT, except RAILROAD WORK that will be performed by BNSF hereunder. STATE will furnish all labor, materials, tools and equipment for the performance of STATE's work. The principal elements of STATE's work are as follows:
 - (a) Reconstruction of the at grade crossing;
 - (b) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
 - (c) Provide suitable drainage, both temporary and permanent as required for the project;
 - (d) Provide appropriate pedestrian control during construction;
 - (e) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;
7. STATE's work will be performed by STATE or STATE's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.
8. STATE will require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman, in accordance with the requirements of Exhibit C attached hereto. Additionally, STATE will require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar

days prior to commencing work on BNSF property, or near BNSF tracks making reference to BNSF's file number 025398R.

9. STATE will include the following provisions in any contract with its contractor(s) performing work on said PROJECT:

- (a) The contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies, and by field inspection. The contractor shall contact Blue Stake and have all underground facilities in the PROJECT area marked to verify their locations prior to performing any construction activity that may damage such facilities. The contractor will be responsible for contacting BNSF's Engineering Representative Richard Barnitz and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other lines (fiber optic, cable, communication or otherwise) may exist.
- (b) Failure to mark or identify these Lines will be sufficient cause for BNSF's Engineering Representative at **505-767-6826** to stop construction at no cost to the STATE or BNSF until these items are completed.
- (c) The contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The contractor must cooperate fully with any telecommunications company (ies) in performing such rearrangements.
- (d) In addition to the liability terms contained elsewhere in this Agreement, the contractor is hereby required to execute Exhibit C and Exhibit C-1 agreement with BNSF which will require the purchase of railroad protective insurance policy with endorsements requested within the Exhibit C and Exhibit C-1 and in addition, name the state of Arizona as an additional insured. The contractor shall also take full responsibility for their subcontractors through such Exhibit C and Exhibit C-1. The contractor shall further be caused to indemnify, defend and hold harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). To the extent permitted by law; **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE**

FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

10. STATE will incorporate in each prime contract for construction of the PROJECT, or the specifications therefore, (i) the provisions set forth in Article III, Sections 7, 8, 9, and 11; (ii) the provisions set forth in Article IV, Sections 3 and 4; and (iii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.
11. Except as otherwise provided below in this Section 11, all construction work performed hereunder by STATE for the PROJECT will be pursuant to a contract or contracts to be let by STATE, and all such contracts will include the following:
 - (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
 - (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
 - (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work will have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and (d) If the STATE's contractor defaults his obligation under his contract with the STATE for any reason his replacement shall be responsible to comply with all related obligations to BNSF as contained in the original contract between the STATE and the first contractor. (d) To facilitate scheduling for the Project, STATE shall have its contractor give BNSF's representative at 602-708-3593 thirty (30) days advance notice of the proposed times and dates for work windows. BNSF and STATE's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows.
12. If the STATE's contractor defaults his obligation under his contract with the STATE for any reason their replacement shall be responsible to comply with all related obligations to BNSF as contained in the original contract between the STATE and the first contractor.
13. STATE will give BNSF's Manager of Public Projects written Notice to Proceed with the RAILROAD WORK after receipt by the STATE of the Opinion and Order from the Arizona Corporation Commission. BNSF will not begin the RAILROAD WORK (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from STATE.

14. STATE agrees to reimburse BNSF for work of an emergency nature caused by STATE or STATE's contractor in connection with the PROJECT which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of STATE; however, STATE reserves the right to review the cause of said work to determine payment responsibilities. If the parties cannot agree on the responsible party of the damages, the matter will be resolved through arbitration pursuant to A.R.S. Section 12-1518.
15. BNSF may charge STATE for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the PROJECT. Such charges will be considered part of the actual cost of the PROJECT, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.
16. **TO THE FULLEST EXTENT PERMITTED BY LAW, STATE HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM (I) THE STATES SOLE USE AND/OR OCCUPANCY OF THE CONSTRUCTION SITE, (II) THE USE, OCCUPANCY OR PRESENCE OF STATE'S CONTRACTORS, TO THE EXTENT THE STATE HAS BREACHED THIS AGREEMENT BY ALLOWING CONTRACTOR AGENTS ONTO RAILROAD PROPERTY WITHOUT SUCH CONTRACTOR AGENTS HAVING AN EXHIBIT C OR EXHIBIT C-1 AGREEMENT EXECUTED IN THE FORM ATTACHED AS EXHIBITS HERETO SIGNED WITH THE RAILROAD, (III) THE SOLE ACTS OR OMISSIONS OF STATE, ITS, OFFICERS OR EMPLOYEES IN, ON, OR ABOUT THE CONSTRUCTION SITE, (V) STATE'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO STATE PURSUANT TO ARTICLE II OF THIS AGREEMENT, (VI) ANY RIGHTS OR INTERESTS GRANTED TO STATE PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VII) STATE'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY STATE, OR (VIII) AN INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF STATE, ITS OFFICERS OR EMPLOYEES BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.**

ARTICLE IV – JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this AGREEMENT will be performed in a good and workmanlike manner and each portion will be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.
2. STATE will require its contractor(s) to reasonably adhere to the PROJECT's construction schedule for all PROJECT work. The parties hereto mutually agree that BNSF's failure to complete the RAILROAD WORK in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this AGREEMENT by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the RAILROAD WORK in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF-owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct, or indirect, consequences or costs resulting from any such reallocation will not constitute a breach of this AGREEMENT by BNSF. Nevertheless, BNSF shall endeavor to utilize all means at its disposal to comply with the original schedule.
3. BNSF will have the right to stop construction work on the PROJECT if any of the following events take place: (i) STATE (or any of its contractors) performs the PROJECT work in a manner contrary to the plans and specifications approved by BNSF; (ii) STATE (or any of its contractors), in BNSF's opinion, executes the PROJECT work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the PROJECT. (iv) STATE fails to pay BNSF for the Temporary Construction Easement and the Permanent Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by STATE or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until valid acceptable insurance has been delivered to and accepted by BNSF. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. Prior to ordering the stoppage of work BNSF shall communicate such deficiencies to the STATE's Engineer and attempt to seek corrections to such deficiencies. In the event that BNSF desires to stop construction work on the PROJECT, BNSF agrees to notify the STATE's Engineer in writing.
4. STATE shall have the right to request that any BNSF Contractor or any employee of a BNSF Contractor who performs work within STATE right of way and which affects STATE's operations or facilities, be removed from STATE right of way for incompetence, neglect of duty, unsafe conduct or misconduct. In the event BNSF or its Contractor elects not to honor such request, STATE may stop the work within its right of way until the matter has been fully resolved to STATE's satisfaction. Before such action is taken the matter will be attempted to be resolved through the STATE's Engineer if the problem occurs during the initial

construction or through the District Permits Supervisor if the problem occurs during a subsequent maintenance effort. STATE shall make the final determination. If the termination of RAILROAD WORK should result in delay claims by ADOT's Contractor, these costs shall be passed to BNSF for payment. For all RAILROAD WORK or subsequent maintenance work conducted by BNSF within STATE right of way BNSF shall acquire a permit for such activity from the applicable STATE District Permits Office. BNSF shall meet and comply will all provisions of said permit.

5. STATE will supervise and inspect the operations of all STATE contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this AGREEMENT and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by STATE personnel at any time during construction of the PROJECT, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the PROJECT will not proceed until STATE corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify the STATE's Engineer for appropriate corrective action.
6. Pursuant to this section and Article II, Section 3 herein, STATE will, out of funds made available to it for the construction of the PROJECT, reimburse BNSF in full for the actual costs of all work performed by BNSF under this AGREEMENT.
7. All expenses detailed in statements sent to STATE pursuant to Article II, Section 3 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this AGREEMENT by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the PROJECT even though such work may have preceded the date of this AGREEMENT and are included in the overhead rates of BNSF.
8. For projects that are funded by the American Recovery and Reinvestment act (ARRA), STATE and BNSF agree as follows:
BNSF and State agree that all applicable terms of ARRA funding shall be complied with by the party responsible therefore under ARRA; e.g., BNSF shall provide information to STATE including but not limited to labor that is used on the PROJECT. This information will include a summary of personnel, hours, dates and type of work performed on the PROJECT. STATE or its CONTRACTOR will use this information to make all applicable reports, including but, not limited to the Federal Highway Administration on the number of jobs created and/or saved as part of the PROJECT
9. The parties mutually agree that no construction activities for the PROJECT, nor future maintenance of the at-grade crossing within twenty-five (25) feet of BNSF's railway once completed, that by mutual agreement of the parties have the potential to impact BNSF facilities and operations within BNSF's right-of-way, will be permitted during the fourth quarter of each calendar year. EMERGENCY WORK will be permitted only upon prior notification to BNSF's Network

Operations Center (telephone number: (800-832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

10. In addition to the terms and conditions set forth elsewhere in this AGREEMENT, BNSF and STATE agree to the following terms upon completion of construction of the PROJECT:

- (a) Before entering upon BNSF's right-of-way for maintenance purposes, by STATE personnel, STATE shall notify BNSF's Road master. Prior written authorization by BNSF's Manager Public Projects will be required for entry into the BNSF right of way during the fourth quarter of each calendar year. STATE is not obligated to execute BNSF's Exhibit C and Exhibit C-1. STATE will abide by the flagging safety requirements set forth in Exhibit C. If work is contracted, STATE will require its prime contractor(s) to comply with the obligations in favor of BNSF set forth in Exhibit C and Exhibit C-1, as may be revised from time to time.
- (b) It is expressly understood by STATE and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (c) If the State performs alterations or modifications to the at-grade crossing within twenty-five (25) feet of BNSF's railway, then without the use of a contractor the States self insurance shall be accepted and evidenced on a certificate of insurance with the following limits:

Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations
- The coverage shall be primary under the limitations of ARS 41-621 and non-contributing with respect to any insurance

Business Automobile Coverage. This Coverage shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired
- The coverage shall be primary under the limitations of ARS 41-621 and non-contributing with respect to any insurance

Workers Compensation and Employers Liability Coverage including coverage for, but not limited to:

- State's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

The State is allowed to self-insure part or all of the insurance requirements without the prior written consent of Railroad. Any deductible, self-insured retention or other financial responsible for claims shall be covered directly by the state in lieu of insurance.

- (d) That this crossing will be transferred back to Maricopa County at a later date and that a separate agreement will be executed between BNSF, STATE and Maricopa County to transfer ownership, maintenance and easement from STATE to Maricopa County.

11. STATE hereby grants to BNSF, at no cost or expense to BNSF, the right to retain an existing dedicated right of access from STATE's property to BNSF tracks for maintenance purposes.
12. BNSF may, at its expense, make future changes or additions to the railroad components of the STRUCTURE if necessary or desirable, in BNSF's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the highway components of the STRUCTURE. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the highway components of the STRUCTURE to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the STRUCTURE, will be divided between BNSF and STATE in such shares as may be mutually agreed to by the parties hereto, subject to Arizona State Transportation Board approval. Before making any such changes, alterations or reconstruction of the highway facilities that will effect the STATE, BNSF shall provide to the STATE copies of the plans and specifications and receive the STATE's written approval prior to commencing work. BNSF is not required to receive written approval from the STATE prior to performing routine maintenance on non-STATE components.
13. STATE may, at STATE's sole expense, alter or reconstruct the highway components of the STRUCTURE if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction will not encroach further upon the easement limits previously granted to State by BNSF, without obtaining BNSF's prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement.
14. The covenants and provisions of this AGREEMENT are binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

15. In the event construction of the PROJECT does not commence within two (2) years of the Effective Date, this AGREEMENT will become null and void. All monies paid to BNSF by STATE for easements/licenses or other fees shall be returned to STATE.
16. BNSF's Manager, Public Projects will be given a notice to proceed when the Opinion and Order has returned from the Arizona Corporation Commission to the STATE. Construction of the PROJECT, on BNSF right-of-way, shall not be commenced until STATE'S contractor shall have given not less than thirty (30) working days prior written notice to BNSF's Manager Public Projects, making reference to BNSF's File Number 025398R which notice shall state the time that operations for construction of the Project, on BNSF right-of-way, shall commence.
17. STATE approval is required for any invoice total which exceeds the cost estimate set forth in Exhibit D plus any approved changes by more than ten percent (10%). Invoices which exceed the original or revised estimated cost by more than ten percent (10%) without prior written approval shall be returned to BNSF pending resolution.
18. If STATE, due to an audit of BNSF's billing sent to STATE has any audit exceptions, STATE and BNSF shall discuss the audit exceptions and agree upon the amount of billing to STATE that is the subject matter of the audit exceptions. If, when doing such review, it is determined by STATE and BNSF that BNSF is to reimburse STATE for any payment already made by STATE to BNSF, BNSF shall make such reimbursement within ninety (90) days after STATE and BNSF have made such determination. Likewise, if it is determined by STATE and BNSF that STATE needs to make any additional payment to BNSF, STATE shall make such additional payment within ninety (90) days after STATE and BNSF have made such determination. If any audit exception(s) cannot be settled by STATE and BNSF through their discussions, the audit exception(s) shall be settled through compromise, arbitration or adjudication as provided in this AGREEMENT
19. This AGREEMENT is subject to the provisions of Chapter 1 of Title 35, Arizona Revised Statutes.
20. BNSF shall comply with all applicable provisions of Executive Order 75-5 and 99-4, "Non-Discrimination in Employment by Government Contractors and Subcontractors".
21. All parties hereby are put on notice that this AGREEMENT is subject to cancellation by the Governor pursuant to A.R.S. § 38-511.
22. In accordance with A.R.S. § 35-214, all books, accounts, reports, files and other records relating to this AGREEMENT shall be subject at reasonable times to inspection and audit by STATE for five (5) years after the receipt of final payment. At STATE's discretion said inspection and audit may be held at BNSF's office during normal business hours. STATE shall conduct its inspection and audit at its expense.

23. This AGREEMENT, including any schedules, exhibits or attachments hereto, constitutes the entire AGREEMENT between the parties, and no understanding or obligation not expressly set forth herein shall be binding upon them. No modification, amendment or alteration of this AGREEMENT shall be valid unless it is in writing and signed by both parties.
24. This AGREEMENT shall be governed by the laws of the State of Arizona.
25. The waiver by either party of any breach or failure to provide full performance under any of the terms or conditions of this AGREEMENT shall not be construed as a waiver of any other term or condition, or of any subsequent breach of the same or any other term or condition.
26. Any notice provided for or concerning this AGREEMENT shall be in writing and be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:
- BNSF Railway Company:
BNSF's Manager Public Projects
740 East Carnegie Drive
San Bernardino, CA 92408
- State of Arizona
Arizona Department of Transportation
Utility & Railroad Section
Attn: Railroad Liaison
205 South 17th Avenue – Mail Drop 618E
Phoenix, Arizona 85007
27. STATE'S PROJECT plans and specifications for TRACS No. 060 MA 139 H6866 01C are incorporated by reference only.
28. Neither termination nor expiration of this AGREEMENT will release either party from any liability or obligation under this AGREEMENT, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.
29. To the maximum extent possible, each provision of this AGREEMENT will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this AGREEMENT is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.
30. This AGREEMENT (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete AGREEMENT between BNSF and STATE with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

IN WITNESS WHEREOF, STATE has caused this AGREEMENT to be executed and attested by its duly qualified and authorized officials, and BNSF has executed this AGREEMENT, both as of the day and year first above written.

STATE OF ARIZONA

JOHN HALIKOWSKI, DIRECTOR

By: Marcel Benberou

Date: 07/13/2010

Printed Name: MARCEL BENBEROU

Utility and Railroad Engineering Section

ACKNOWLEDGMENT BY STATE

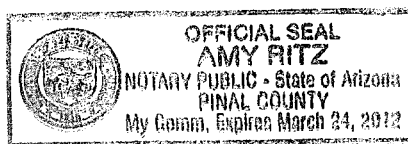
STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 13th day of July, 20 10, by Marcel Benberou the Manager of the Utility & Railroad Engineering Section, Arizona Department of Transportation.

My Commission Expires:

March 24, 2012

Amy Ritz
Notary Public



BNSF RAILWAY COMPANY

By: ML

Date: 7/15/2010

Printed Name: Melvin Thomas

Title: Mgr Public Projects

APPROVED
[Signature]
Assistant Attorney General
Attorney for Department
of Transportation
Date 2/12/10

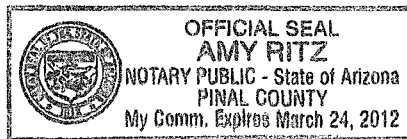
ACKNOWLEDGMENT BY BNSF

STATE OF Arizona)
) ss
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 15th day of July, 20 10, by Melvin Thomas, the Manager, Public Projects on behalf of Burlington Northern Santa Fe, a Delaware corporation.

My Commission Expires:
March 24, 2012

Amy Ritz
Notary Public



107th Ave
DOT # 025 398 R

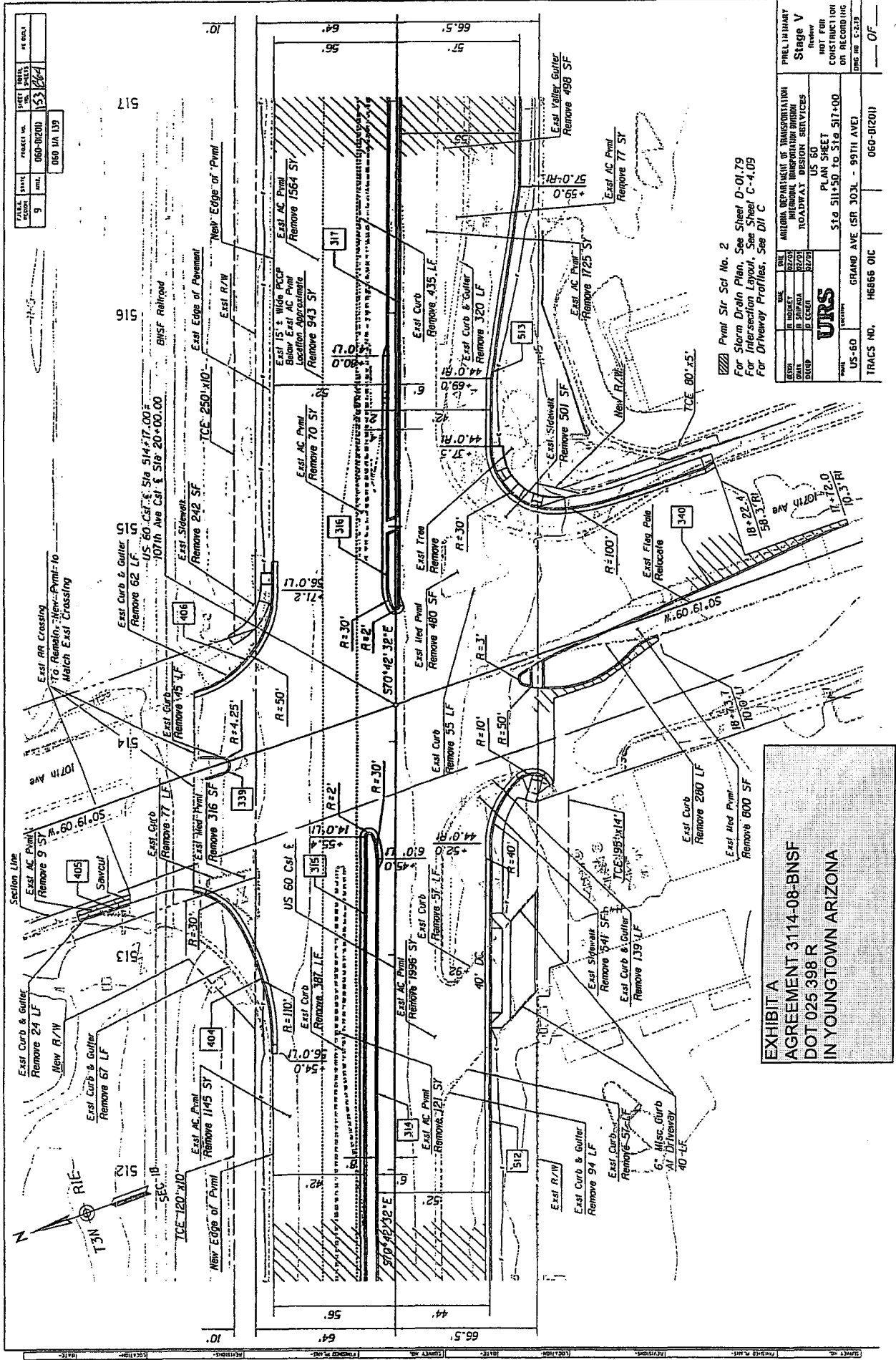


Exhibit B

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that **BNSF RAILWAY COMPANY**, (formerly known as The Burlington Northern and Santa Fe Railway Company and formerly known as Burlington Northern Railroad Company) a Delaware corporation, whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830, Grantor, for Three thousand six hundred seventy five and 86/100 Dollars (**\$3,675.86**) to it paid by Arizona Department of Transportation , Grantee, and the promises of the Grantee hereinafter specified, does hereby remise, release and quitclaim unto the Grantee, subject to the terms and conditions hereinafter set forth, an **EASEMENT** for the purpose of constructing, maintaining and operating an at-grade crossing and for no other purpose, located at Railroad Mile Post 176.33 , hereinafter called Crossing, over, upon and across the premises, situated in County of Maricopa, State of Arizona, being more particularly described on Exhibit "B-3 (Parcel 5)", attached hereto and by this reference made a part hereof.

RESERVING, however, unto the Grantor, its successors and assigns, the right to construct, place, operate, maintain, alter, repair, replace, renew, improve and remove communication lines above, below and on the surface of the premises, including, without limitation, transmission by conduit, fiber optics, cable, wire or other means of electricity, voice data, video, digitized information, or other materials or information, pipelines, utility lines, track and facilities including the right of ingress and egress in any such manner as does not unreasonably interfere with Grantee's use of the premises for said Structure, and further reserving unto Grantor, its successors and assigns, all right and privilege of ingress and egress to said premises as Grantor, its successors and assigns may require to investigate and remediate environmental contamination and hazards, and further reserving the right and privilege to use said land for any and all purposes not inconsistent with the use thereof for said Structure.

The foregoing easement is made subject to and upon the following express conditions:

1. To existing interests in the above-described premises to whomsoever belonging and of whatsoever nature and any and all extensions and renewals thereof, including but not limited to underground pipe line or lines, or any type of wire line or lines, if any.
2. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of said Structure shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the

premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing.

3. The Grantee shall bear the cost of removal, relocation or reconstruction of any and all right of way fences, telephone or telegraph poles, or other facilities, the removal, relocation or reconstruction of which may be made necessary by reason of the use of said premises for said Structure purposes.
4. The Grantee shall, at its own cost and expense, make adjustment with industries or other lessees of Grantor for buildings or improvements that may have to be relocated, reconstructed or destroyed by reason of the construction and maintenance of said Structure on said premises.
5. If during the construction or subsequent maintenance of said Structure, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Grantee shall indemnify, protect and defend the Grantor from any and all liability, claims or demands, if any, which arise as a result of exposure and/or removal of said contaminated soils or materials. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.
6. Grantor and Grantee have entered into that certain Overpass Agreement dated as of _____ concerning the Premises (the "At-Grade Agreement"). The terms of the Overpass Agreement are incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the Overpass Agreement is, for whatever reason, no longer in effect.
7. The Grantee or its contractor(s) shall telephone Grantor's Communication Network Control Center at **(800) 533-2891** (a 24 hour number) to determine if fiber optic cable is buried anywhere on the premises; and if so, the Grantee or its contractor(s) will contact the Telecommunications Company(ies) involved, and make arrangements with the Telecommunications Company(ies) for protection of the fiber optic cable prior to beginning any work on the premises.
8. If said described premises, or any part thereof, shall for a period of two years cease to be used by said Grantee, or by the public, for the purpose, as aforesaid, or should they be converted to any other use whatsoever, , then and in any such event, all the right, title, interest, benefits and enjoyment of said Grantee, or of the public, in and to said premises, for any purposes whatsoever, shall immediately cease and the said Grantor, its successors and assigns, may, at its or their option, re-enter, retake and hold said described lands and premises as of the present estate of said Grantor without compensation to said Grantee, the public, or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of, or damage

to any premises or the improvements thereon abutting on said easement area or any part thereof.

9. The Grantor does not warrant its title to said premises nor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interest of others, including the tenants and licensees of the Grantor.
10. This easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for public use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

IN WITNESS WHEREOF, the said **BNSF RAILWAY COMPANY** has caused this instrument to be signed by its authorized officer, and the corporate seal affixed on the _____ day of _____, 20____.

BNSF RAILWAY COMPANY

By: _____

General Director-
Land Revenue Management

ATTEST:

By: _____

Assistant Secretary

STATE OF TEXAS)

) ss.

COUNTY OF TARRANT)

I, _____, a Notary Public in and for said County and State, do hereby certify that _____, General Director-Land Revenue Management, of BNSF Railway Company, and _____, Assistant Secretary of said BNSF Railway Company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, and to me personally known to be respectively the General Director-Land Revenue Management and Assistant Secretary of said corporation, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of said corporation, being thereunto duly authorized for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____,
20__.

Notary Public

My commission expires: _____

EXHIBIT "B-1"

Memorandum of Easement

THIS MEMORANDUM OF EASEMENT is hereby executed this ____ day of _____, 20____, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and Arizona Department of Transportation, a Political Subdivision ("**Grantee**"), whose address for purposes of this instrument is 205 S 17th Avenue Phoenix Arizona 85009, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Maricopa County, _____ as described on **Exhibit " B"** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____ (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

[Signature page follows]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____

Name: _____

Title: _____

GRANTEE:

By: _____

Name: _____

Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____ (name) as _____ (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

Notary Public

(Seal)

My appointment expires: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____ (name) as _____ (title) of Arizona DOT, a Political Subdivision.

Notary Public

(Seal)

My appointment expires: _____

thence along said existing easterly right of way line of 111th Avenue, from a Local Tangent Bearing of South 00°19'51" West, along a curve to the Left, having a radius of 60.00 feet, a length of 19.47 feet to the POINT OF BEGINNING;

thence continuing along said existing easterly right of way line of 111th Avenue, from a Local Tangent Bearing of South 18°15'38" East, having a radius of 60.00 feet, a length of 52.92 feet;

thence North 43°31'46" West 51.22 feet to the POINT OF BEGINNING.

Parcel No. 4:

That portion of said Northeast quarter (NE¼) of Section 18 described as follows:

Commencing at said South quarter corner of Section 18;

thence along said North-South mid section line of Section 18 North 00°19'51" East 3907.65 feet to said existing right of way line common to US Highway 60 and B.N.S.F. Railroad;

thence along said existing right of way line common to US Highway 60 and B.N.S.F. Railroad South 70°42'50" East 50.60 feet to the POINT OF BEGINNING on the existing easterly right of way line of 111th Avenue;

thence along said existing easterly right of way line of 111th Avenue North 19°17'10" East 2.00 feet;

thence South 70°42'50" East 586.93 feet;

thence South 19°17'10" West 2.00 feet to said existing right of way line common to US Highway 60 and B.N.S.F. Railroad;

thence along said existing right of way line common to US Highway 60 and B.N.S.F. Railroad North 70°42'50" West 586.93 feet to the POINT OF BEGINNING.

Parcel No. 5:

That portion of said Northeast quarter (NE¼) of Section 18 described as follows:

(continued)

EXHIBIT B-2 (PAGE 1 OF 2)
PARCEL 5
AGREEMENT 3114-08-BNSF
DOT 025 398 R
IN YOUNGTOWN, ARIZONA

PROJECT: 060 MA 139 H6866 01R **LOCATION:** Grand Ave, SR 303L – 99th Ave **PARCEL:** 7-10820

sw 05/07/2009

Commencing at an aluminum cap stamped "RLS 21080" marking the East quarter corner of said Section 18, being North 00°25'52" East 2623.26 feet from a MCDOT brass cap marking the Southeast corner of said Section 18;

thence along the East line of said Section 18 North 00°26'47" East 305.57 feet to said existing right of way line common to US Highway 60 and B.N.S.F. Railroad;

thence along said existing right of way line common to US Highway 60 and B.N.S.F. Railroad North 70°42'50" West 102.68 feet to the POINT OF BEGINNING on the existing westerly right of way line of Del Webb Boulevard;

thence continuing along said existing right of way line of Del Webb Boulevard North 70°42'50" West 28.97 feet;

thence North 66°48'44" East 48.13 feet;

thence South 70°42'50" East 16.84 feet to said existing westerly right of way line of Del Webb Boulevard;

thence along said existing right of way line of Del Webb Boulevard South 55°00'47" West 40.03 feet to the POINT OF BEGINNING.

Parcel No. 6:

That portion of said existing railroad right of way of the BNSF Railway Company in the Southwest quarter (SW¼) of Section 17, Township 3 North, Range 1 East, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

Commencing at an aluminum cap stamped 'RLS 21080' marking the Center quarter corner of said Section 17, being North 00°26'17" East 2625.90 feet from a MC brass cap marking the South quarter corner of said Section 17;

thence along the North-South mid section line of said Section 17 South 00°26'17" West 596.31 feet to said existing right of way line common to US Highway 60 and B.N.S.F. Railroad;

thence along said existing right of way line common to US Highway 60 and B.N.S.F. Railroad North 70°42'50" West 36.26 feet;

(continued)

| |
|---|
| EXHIBIT B-2 (PAGE 2 OF 2) PARCEL 5 AGREEMENT 3114-08-BNSF DOT 025 398 R IN YOUNGTOWN, ARIZONA |
|---|

PARCEL EXHIBIT SHEET TO OBTAIN BNSF PERMANENT RIGHT OF ENTRY

TRACS NO :
060 MA 139 H6866 01R
FED ID :
UNASSIGNED

| PARCEL NUMBER | TOTAL AREA | AREA REQUIRED | | | REMAINDER | |
|------------------|---------------|--------------------------------------|------------------------------------|------------------|-----------|-------|
| | | GROSS INCLUDING (EXISTING R/W) | NET EXCLUDING (EXISTING R/W) | NEW EASEMENTS | LEFT | RIGHT |
| 7-10820 | | | 744 | | | |

ALL AREAS ARE IN SQUARE FEET UNLESS OTHERWISE NOTED

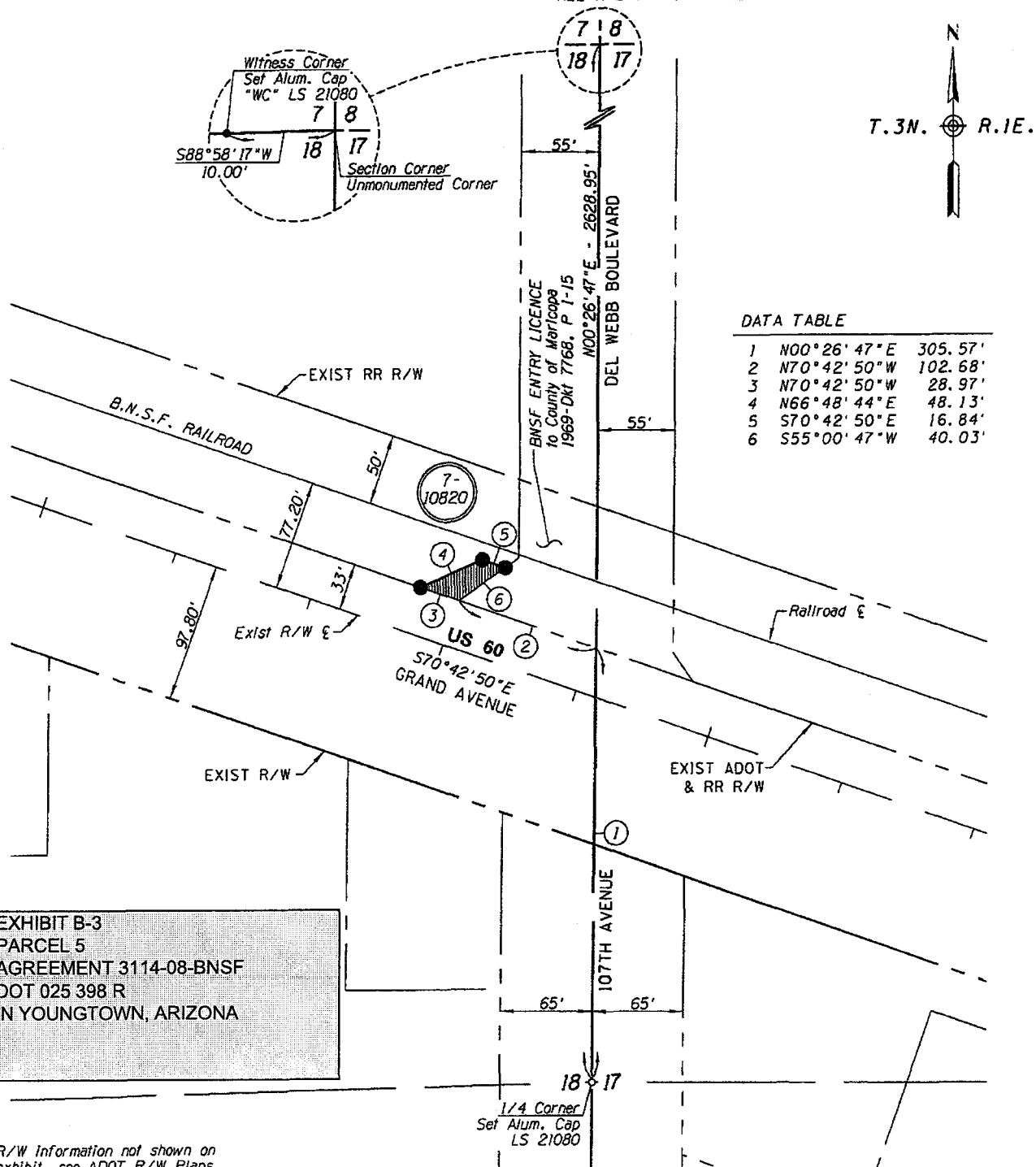


EXHIBIT B-3
PARCEL 5
AGREEMENT 3114-08-BNSF
DOT 025 398 R
IN YOUNGTOWN, ARIZONA

Note:
For R/W Information not shown on
this exhibit, see ADOT R/W Plans
Project No. 060 MA 139 H6866 01R

URS

7720 North 16th Street - Suite 100
Phoenix, AZ 85020 - 602.371.1100

New R/W Area

... \ROW\REXHIBITS\RR_NRW5.DGN

BNSF PARCEL EXHIBIT NO.5

5/1/2009
6:14:35 AM

Sheet 5 of 6

EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of US 60/ Grand Avenue widening from SR 303 to 99th Avenue (060 MA 139 H6866 01C); specifically at US 60 and 107th Avenue at-grade crossing AAR/DOT # 025 398 R.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify the Arizona DOT and Railway's Manager Public Projects, telephone number (909)386-4472 at least thirty (30) calendar days before commencing any work on Railway Property. Contractors notification to Railway, must refer to Railroad's file 025398R.

- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Superintendent at (602) 382-5828 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts

- 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained: [Note to Drafter: The vertical clearance should mirror the final negotiated design clearance]
 - 25' Horizontally from centerline of nearest track
 - 23'-3 1/2" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the Arizona DOT and must not be undertaken until approved in writing by the Railway, and until the Arizona DOT has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by the Arizona DOT for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services on railroad property under this Agreement.

The background screening shall at a minimum meet the criteria defined by the e-RAILSAFE program outlined at <http://www.e-railsafe.com> in addition to any other applicable regulatory requirements. The e-RAILSAFE program uses rail industry background screening standards.

Contractor shall obtain consent from all employees screened in compliance with the e-RAILSAFE program criteria to release completed background information to BNSF. Contractor shall be subject to periodic audit to ensure compliance.

Contractor shall not permit any of its employees, subcontractors or agents to perform services on property hereunder who are not approved under e-RAILSAFE program standards. Railroad shall have the right to deny entry onto its premises to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth for the e-RAILSAFE program or who pose a threat, in Railroad's reasonable opinion, to the safety or security of Railroad's operations.

Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster (602) 382-5803 a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
 - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

- **1.05.03c** The cost of flagger services provided by the Railway will be borne by the Arizona DOT. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- **1.05.03d** The average train traffic on this route is _____ freight trains per 24-hour period at a timetable speed of _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with

permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. (NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)

- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILROAD'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative (505-767-6826). All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or

protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather _____
(if non-Railway location)
5. Social Security # _____
6. Name (last, first, mi) _____
7. Address: Street: _____ City: _____ St. _____ Zip: _____
8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.): _____
12. Treatment:
? First Aid Only
? Required Medical Treatment
? Other Medical Treatment
13. Dr. Name _____ 30. Date: _____
14. Dr. Address:
Street: _____ City: _____ St: _____ Zip: _____
15. Hospital Name: _____
16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____
17. Diagnosis: _____

**FAX TO
RAILWAY AT (817) 352-7595
AND COPY TO
RAILWAY ROADMASTER FAX**

EXHIBIT "C-1"

**Agreement
Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR**

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: 025398R

Agency Project: US 60/ Grand Avenue widening from SR 303 to 99th Avenue (060 MA 139 H6866 01C);
specifically at US 60 and 107th Avenue at grade crossing AAR/DOT # 025 398 R

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 200_, [*****Drafter's Note: insert the date of the contract between the Agency and the Contractor here*****] with Arizona DOT for the performance of certain work in connection with the following project _____ . Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for Arizona DOT (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or

in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railroad to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILROAD FOR RAILROAD'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to **Railroad** payments related to the Federal Employers Liability Act or a **Railroad** Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Arizona's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Agreement

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railroad** for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by **Railroad**. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and **Railroad** must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming **Railroad** as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of **Railroad**. If granted by **Railroad**, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this **Agreement**, be covered by contractor's insurance will be covered as if contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-766-2299

Any insurance policy must be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this **Agreement** has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this **Agreement**. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, **Railroad** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming **Railroad** as an additional insured, and requiring that the subcontractor release, defend and indemnify **Railroad** to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify **Railroad** herein.

Failure to provide evidence as required by this section will entitle, but not require, **Railroad** to terminate this **Agreement** immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this **Agreement**. Damages recoverable by **Railroad** will not be limited by the amount of the required insurance coverage.

For purposes of this section, **Railroad** means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, , including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay for certain trains may be \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Field Engineering representative (505-767-6826) four (4) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Manager Public Projects

Contact Person: _____
Address: _____

Accepted and effective this ____ day of 20__.

City: _____ State: ____ Zip: ____
Fax: _____
Phone: _____
E-mail: _____

Exhibit D

TRACS 060 MA 139 H6866 01C
Project ARRA-060-B(201)A
Agreement 3014-08-BNSF
BNSF LS 7208, Rail Mile 176.33, Phoenix Subdivision
Signal work at US 60/107th Avenue
DOT # 025 398 R

Summary of Costs to be paid by STATE thru this agreement
(RR Flagging is paid thru agreement 3001-09-BNSF)
(There is no Surface Work)

| | |
|----------------------------------|---------------------|
| Railroad Signal Work | |
| Labor | \$ 96,570.00 |
| Material | \$ 61,043.00 |
| Administration | \$ 1,924.00 |
| Other | \$ 34,736.00 |
| Signal Subtotal | <u>\$194,273.00</u> |
| Permanent and Temporary Easement | |
| Agreed Cost | \$ 1,675.86 |
| Application Fee | \$ 2,000.00 |
| Total Easement Cost | <u>\$ 3,675.86</u> |

Total Cost for Agreement 3014-08-BNSF \$ 197,948.86

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
STATE OF ARIZONA

LOCATION SUN CITY

DETAILS OF ESTIMATE

PLAN ITEM: PSI025398R

VERSION: 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

REVISED TO NEW PRICING LIST 09/04/03 (THERE WAS NO APPROVED MATERIAL LIST AT THIS TIME.)
REUSE EXISTING FLASHERS WITH GATES AND INSTALL (1) RETIRED BUNGALOW FROM ADJ. XING, (1) NEW CANTILEVER AND (1) NEW
FLASHER AT 107TH AVENUE IN SUN CITY, AZ. L/S 7208, MP 176.33, SOUTHWEST DIV., PHOENIX SUBDIV., DOT # 025398R
MONTHLY POWER UTILITY COST CENTER:
THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSE ONLY.
CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.
THIS ESTIMATE GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR MATERIAL, LABOR, AND
OVERHEADS.

THE STATE OF ARIZONA IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY

THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS, DETAILED AND ACCURATE MATERIAL LISTS WILL BE
FURNISHED WHEN ENGINEERING IS COMPLETED.

***** SIGNAL WORK ONLY *****

REVISED TO NEW PRICING LIST 09/04/03

| DESCRIPTION | QUANTITY U/M | COST | TOTAL \$ |
|---------------------------|--------------|--------|----------|
| ***** | | | |
| LABOR | | | |
| ***** | | | |
| SIGNAL FIELD LABOR - CAP | 1148.0 MH | 29,917 | |
| PAYROLL ASSOCIATED COSTS | | 20,582 | |
| EQUIPMENT EXPENSES | | 9,274 | |
| DA LABOR OVERHEADS | | 32,011 | |
| INSURANCE EXPENSES | | 4,786 | |
| TOTAL LABOR COST | | 96,570 | 96,570 |
| ***** | | | |
| MATERIAL | | | |
| ***** | | | |
| BATTERY | 1.0 LS N | 6,180 | |
| BOX, PREEMPTION | 1.0 EA N | 270 | |
| BUNGALOW MATERIAL | 1.0 LS N | 5,075 | |
| CABLE | 1.0 LS N | 9,186 | |
| CANTILEVER COMPLETE | 1.0 EA N | 19,000 | |
| CHARGER | 1.0 LS N | 1,326 | |
| FIELD MATERIAL | 1.0 LS N | 3,099 | |
| FLASHER COMPLETE | 1.0 EA N | 1,950 | |
| GATE ARM | 3.0 EA N | 1,725 | |
| GUARDRAIL, DUAL | 1.0 EA N | 673 | |
| LED LIGHT ADJUSTMENT | 26.0 EA N | 6,266 | |
| LED LIGHT GATE KIT | 3.0 EA N | 1,191 | |
| PREEMPTION MISC. WIRING | 1.0 LS N | 250 | |
| RELAY, PREEMPTION, W/BASE | 1.0 EA N | 500 | |
| USE TAX | | 3,793 | |
| OFFLINE TRANSPORTATION | | 559 | |
| TOTAL MATERIAL COST | | 61,043 | 61,043 |
| ***** | | | |
| OTHER | | | |
| ***** | | | |
| AC SERVICE | 1.0 EA N | 1,500 | |
| CONCRETE/FOUNDATION CANT. | 1.0 LS N | 2,000 | |
| CONTRACT ENGR. | 1.0 EA N | 5,000 | |
| CONTRACT SIGNS/CONES | 1.0 LS N | 3,000 | |
| DIRECTIONAL BORE | 1.0 LS N | 4,500 | |
| SURFACE ROCK | 50.0 CY N | 1,250 | |
| TOTAL OTHER ITEMS COST | | 17,250 | 17,250 |
| PROJECT SUBTOTAL | | | 174,863 |
| CONTINGENCIES | | | 17,486 |
| BILL PREPARATION FEE | | | 1,924 |

EXHIBIT D-1
PAGE 1 OF 2
AGREEMENT 3114-08-BNSF
DOT# 025 398 R

GROSS PROJECT COST
LESS COST PAID BY BNSF
TOTAL BILLABLE COST

194,273

0

194,273

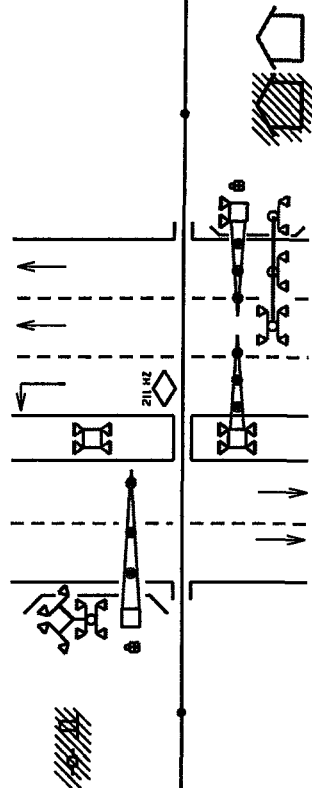
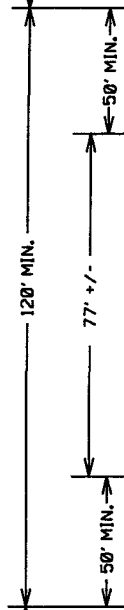
BNSF RAILWAY COMPANY

TO WILLIAMS

EASTWARD APPR. 2112'
40 MPH

WESTWARD APPR. 2112'
40 MPH

TO MOBEST



107TH AVENUE

DOT # 025 398 R

INSTALL: CANTLEVER & FLASHER
REUSE: GATES & FLASHER
CONTROL DEVICES: REUSE PMD-2

BOLO - IN

- OUT

SALVAGE: NONE

EXHIBIT D-2
AGREEMENT 3114-08-BNSF
DOT 025 398 R

INSTRUMENT HOUSE

BELL

METER

CROSSING CONTROL CONNECTIONS

BIDIRECTIONAL CROSSING CONTROL

UNIDIRECTIONAL CROSSING CONTROL

COUPLER OR TERMINATION

GUARD RAIL

Warning device placement:

Clearance to C.L. Track = Min. 12'

Edge of Road to C.L. Foundation:

Min. 5'3" with curb.

Min. 9'3" without curb.

Max. 12'

House Clearance:

25' Min. to Near Rail

30' Min. to Edge of Road

ALL LIGHTS TO BE LED

BNSF RAILWAY CO.

LOCATION: SUN CITY, AZ.

STREET: 107TH AVENUE

LS: 7208

M.P. 176.33

DOT # 025 398 R

DIVISION: SOUTHWEST

SUBDIVISION: PHOENIX

KANSAS CITY

NO SCALE

DATE: 02/06/09

FILE: 7208176 33.dgn

CMB

ARIZONA DEPARTMENT OF TRANSPORTATION

UTILITY AND RAILROAD ENGINEERING SECTION

RAILROAD AGREEMENT

Between

**THE STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION**

and

BNSF RAILWAY COMPANY

BNSF

June 29, 2010

AGREEMENT No. 3115-08-BNSF

BNSF Cont No. _____

BNSF File No. 025399X

AGREEMENT TRACS No. 060 MA 139 H6866 01C

CONSTRUCTION TRACS No. 060 MA 139 H6866 01C

CONSTRUCTION PROJECT No. ARRA-060-B(201)A

FEDERAL AID PROJECT No. ARRA-060-B(201)A

HIGHWAY: PHOENIX-WICKENBURG HIGHWAY (US 60)

LOCATION: SR 303 to 99th Avenue Widening

AAR/DOT # 025 399 X at 103rd Avenue

Railroad LS 7208 MP 176.85

ADOT ORIGINAL

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This AGREEMENT is executed to be effective as of this _____ day of _____, (Year) ("Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("BNSF"), and the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "STATE". All lettered exhibits are incorporated and made a part of this AGREEMENT by reference and attachment regardless of designation or alphabetical order.

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Youngtown, County of Maricopa, State of Arizona; BNSF (predecessor: THE CALIFORNIA, ARIZONA AND SANTA FE RAILWAY COMPANY) and STATE entered into an Agreement dated the 21th of day of February of 1939, recorded in Maricopa County records at DKT 0279, Pg 1809, which granted the right to construct, maintain and use the highway crossing of the BNSF right-of-way and over its tracks, in Maricopa County, State of Arizona, now designated as AAR/DOT # 025 399 X RRMP 176.85 Phoenix Subdivision. The STATE desires to improve the existing 103rd Avenue at-grade crossing by widening the roadway and associated at-grade crossing.

The STATE has requested an easement from the BNSF for the right to construct, maintain and use the proposed new highway crossing of the BNSF right-of-way and over its tracks as shown on Exhibit B-3. The state will pay BNSF the sum of Two thousand, eight hundred six and 40/100 Dollars (\$2,806.40) as compensation for the Temporary Construction Easement and Permanent Easement as needed.

The parties hereto desire to express in writing their understanding and agreement with respect to the PROJECT and pursuant to which the crossing, connecting roadways and other improvements are to be constructed and maintained.

DEFINITIONS:

- A. AGREEMENT means this specific AGREEMENT with all attached exhibits together with all attachments incorporated by reference.
- B. AGREEMENT TRACS NO. means the agreement accounting number utilized for ADOT Construction Project, which is 060 MA 139 H6866 01C.
- C. CONSTRUCTION TRACS NO. means the roadway construction accounting number utilized for ADOT Construction Project, which is 060 MA 139 H6866 01C.
- D. CONSTRUCTION PROJECT NO. ARRA-060-B(201)A.
- E. EMERGENCY WORK by BNSF means work of an immediate nature required to maintain the integrity of rail service, restore railroad operations or for the protection of persons or BNSF property.
- F. PROJECT means all 103rd Avenue work related to the construction of including, but not limited to, any and all roadway improvements, changes to railroad safety devices and appurtenances, temporary and permanent track work, fencing, communication, signal and electrical lines and appurtenances, grading, both temporary and permanent drainage facilities, signing and striping, modification to utilities, right-of-way acquisition, preliminary and construction engineering, contract preparation, cuts, fills, highway pavement, retaining

walls and all highway facilities at the locations shown on the STATE's PROJECT plans and specifications included herein by reference only. Additionally, temporary controls during construction must be in compliance with Section 8A-5, "Temporary Traffic Control Zones" of the Manual on Uniform Traffic Control Devices, Federal Highway Administration.

- G. RAILROAD WORK means pre-engineering, engineering, management, administration, design, preparation of plans, specifications and estimate, construction labor, materials and equipment called for in the AGREEMENT, and other work mutually agreed upon in the AGREEMENT, including approved changes in scope.

ARTICLE I – SCOPE OF WORK

This project entails construction and modification of the existing at grade crossing at 103rd Avenue; further identified as AAR/DOT # 025 399 X. Construction of the PROJECT shall include the following RAILROAD WORK performed by BNSF:

1. BNSF will:
 - a. Acquire and/or relocate existing crossing signal equipment as necessary;
 - b. Provide Permanent Easement as shown in Exhibit B-3.
 - c. Provide Temporary Construction Easement as shown in Exhibit B-3.
2. Preliminary engineering, design, contract preparation, and a project coordinator / inspector at STATE's expense as required in connection with the construction of the Project;
3. Flagging services will be paid by the STATE directly to BNSF thru separate agreement 3001-09-BNSF.
4. Procurement of materials, equipment and supplies necessary for the railroad work;

ARTICLE II – BNSF OBLIGATIONS

In consideration of the covenants of STATE set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. In consideration of the faithful performance of the STATE'S covenants contained herein, BNSF hereby grants to STATE, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive easement (hereinafter called, "Temporary Construction Easement") to reconstruct the at-grade crossing together with a Permanent Easement to use and maintain said crossing across or upon the portion of BNSF's right-of-way described further on Exhibit B-3, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate, provided such facilities do not affect the operational integrity of the STATE's at-grade crossing.
- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate, provided such use or operations does not affect the operational and structural integrity of the STATE's at-grade crossing.

In the event STATE is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to STATE for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to STATE herein nor shall any subsequent sale or abandonment of said right-of-way.

Provided STATE is in compliance with the terms and conditions of this Agreement, BNSF will grant to STATE, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to construct, use and maintain the at-grade crossing, substantially in the form of Exhibit B and Exhibit B-3 attached to this Agreement. STATE must pay BNSF the sum of Two thousand eight hundred six and 40/100 Dollars (\$2,806.40) as compensation for the Easement within sixty (60) days of issuing a Notice to Proceed pursuant to Article III, Section 14 of this Agreement after having received an invoice for the same from BNSF. This payment will be received before any construction activities can take place. If STATE fails to pay BNSF within the sixty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

The term of the Temporary Construction Easement begins on the Effective Date and ends upon substantial completion of the at-grade crossing. The Temporary Construction Easement and related rights given by BNSF to STATE in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. In the event STATE is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to STATE for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to STATE herein.

2. BNSF will furnish all labor, materials, tools, and equipment for RAILROAD WORK required for the construction of the PROJECT, such RAILROAD WORK and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the PROJECT has not commenced within six (6) months following the Notice to Proceed, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this AGREEMENT as though originally set forth herein. Any item of work incidental

to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this AGREEMENT upon written approval of STATE, which approval will not be unreasonably withheld.

3. BNSF will do all RAILROAD WORK set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.
4. STATE agrees to reimburse BNSF for work of an emergency nature caused by STATE or STATE's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of STATE and STATE agrees to fully reimburse BNSF for all such emergency work, of which BNSF will notify STATE at its earliest opportunity.
5. During the construction of the Project, BNSF will send STATE itemized monthly invoices detailing the costs of the RAILROAD WORK performed by BNSF under this Agreement. Except for the final invoice, monthly invoices shall only be submitted for costs of five hundred dollars (\$500) or more. Within one hundred and twenty (120) days after completion of RAILROAD WORK BNSF will send STATE a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 6 herein, STATE must pay the final invoice within sixty (60) days of the date of the final invoice. Invoices shall include a detailed cost run summary, the appropriate AGREEMENT and CONSTRUCTION TRACS numbers and shall be labeled as "Progress Invoice" or "Final Invoice" as the case may be. Costs shall be accumulated and invoiced in accordance with the Federal Acquisition regulations. The United States Code of Federal Regulations, 23 CFR 646 B is incorporated into this AGREEMENT by reference. Prior to submitting the first invoice to STATE, BNSF will notify STATE, in writing, of the actual BNSF construction start date. BNSF construction start date shall not be prior to receiving a Notice to Proceed from STATE. Prior to submitting the final invoice to STATE, BNSF agrees to notify STATE, in writing, of the actual BNSF construction completion date.
6. BNSF shall be given progress copies of the STATE's PROJECT plans at the 30%, 60% and 95% level, along with a copy of the final PS&E submittal by the STATE's Consultant. BNSF is encouraged to make comments to the STATE's PROJECT plan with regard to BNSF facilities. If, after review of the final PS&E submittal, BNSF sees no significant changes affecting BNSF facilities from the previous submissions, BNSF shall signify by letter, in the form shown in Exhibit E, addressed to the STATE (see Article IV, Section 26), its approval of the PROJECT plan as to the impacts to BNSF facilities.

ARTICLE III – STATE OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, STATE agrees as follows:

1. STATE will furnish a pdf file of railroad-specific 100% plans and specifications (**in English Units**) for the PROJECT to BNSF. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this AGREEMENT and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the horizontal and vertical clearance standards for structures over BNSF track facilities, and such plans and specifications will not adversely impact BNSF operations. Such approval by BNSF shall not be deemed to mean that the plans and specifications, or construction, is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.
2. STATE or STATE's Contractor will make any required application and obtain all required permits and approvals for the construction of the PROJECT.
3. STATE will provide for and maintain minimum vertical and horizontal clearances, as required and approved by BNSF as part of the plans and specifications for the PROJECT.
4. STATE will acquire all rights-of-way necessary for the construction of the PROJECT.
5. STATE must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual for installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project. The most recent version of the Utility Accommodation Manual is available on the BNSF website.
6. STATE will construct the PROJECT as shown on the plans referenced pursuant to Exhibit A and do all work provided for in the plans and specifications for the PROJECT, except RAILROAD WORK that will be performed by BNSF hereunder. STATE will furnish all labor, materials, tools and equipment for the performance of STATE's work. The principal elements of STATE's work are as follows:
 - (a) Reconstruction of the at grade crossing;
 - (b) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
 - (c) Provide suitable drainage, both temporary and permanent as required for the project;
 - (d) Provide appropriate pedestrian control during construction;
 - (e) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;

7. STATE's work will be performed by STATE or STATE's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.
8. STATE will require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman, in accordance with the requirements of Exhibit C attached hereto. Additionally, STATE will require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property, or near BNSF tracks making reference to BNSF's file number 025399X.
9. STATE will include the following provisions in any contract with its contractor(s) performing work on said PROJECT:
 - (a) The contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies, and by field inspection. The contractor shall contact Blue Stake and have all underground facilities in the PROJECT area marked to verify their locations prior to performing any construction activity that may damage such facilities. The contractor will be responsible for contacting BNSF's Engineering Representative Richard Barnitz and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other lines (fiber optic, cable, communication or otherwise) may exist.
 - (b) Failure to mark or identify these Lines will be sufficient cause for BNSF's Engineering Representative at **505-767-6826** to stop construction at no cost to the STATE or BNSF until these items are completed.
 - (c) The contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The contractor must cooperate fully with any telecommunications company (ies) in performing such rearrangements.
 - (d) In addition to the liability terms contained elsewhere in this Agreement, the contractor is hereby required to execute Exhibit C and Exhibit C-1 agreement with BNSF which will require the purchase of railroad protective insurance policy with endorsements requested within the Exhibit C and Exhibit C-1 and in addition, name the state of Arizona as an additional insured. The contractor shall also take full responsibility for their subcontractors through such Exhibit C and Exhibit C-1. The contractor shall further be caused to indemnify, defend and hold harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or

destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). To the extent permitted by law; **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

10. STATE will incorporate in each prime contract for construction of the PROJECT, or the specifications therefore, (i) the provisions set forth in Article III, Sections 7, 8, 9, and 11; (ii) the provisions set forth in Article IV, Sections 3 and 4; and (iii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.
11. Except as otherwise provided below in this Section 11, all construction work performed hereunder by STATE for the PROJECT will be pursuant to a contract or contracts to be let by STATE, and all such contracts will include the following:
 - (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
 - (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
 - (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work will have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and (d) If the STATE's contractor defaults his obligation under his contract with the STATE for any reason his replacement shall be responsible to comply with all related obligations to BNSF as contained in the original contract between the STATE and the first contractor. (d) To facilitate scheduling for the Project, STATE shall have its contractor give BNSF's representative at 602-382-5803 thirty (30) days advance notice of the proposed times and dates for work windows. BNSF and STATE's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows.

13. If the STATE's contractor defaults his obligation under his contract with the STATE for any reason their replacement shall be responsible to comply with all related obligations to BNSF as contained in the original contract between the STATE and the first contractor.
14. STATE will give BNSF's Manager of Public Projects written Notice to Proceed with the RAILROAD WORK after receipt by the STATE of the Opinion and Order from the Arizona Corporation Commission. BNSF will not begin the RAILROAD WORK (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from STATE.
15. STATE agrees to reimburse BNSF for work of an emergency nature caused by STATE or STATE's contractor in connection with the PROJECT which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of STATE; however, STATE reserves the right to review the cause of said work to determine payment responsibilities. If the parties cannot agree on the responsible party of the damages, the matter will be resolved through arbitration pursuant to A.R.S. Section 12-1518.
16. BNSF may charge STATE for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the PROJECT. Such charges will be considered part of the actual cost of the PROJECT, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.
17. **TO THE FULLEST EXTENT PERMITTED BY LAW, STATE HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM (I) THE STATES SOLE USE AND/OR OCCUPANCY OF THE CONSTRUCTION SITE, (II) THE USE, OCCUPANCY OR PRESENCE OF STATE'S CONTRACTORS, TO THE EXTENT THE STATE HAS BREACHED THIS AGREEMENT BY ALLOWING CONTRACTOR AGENTS ONTO RAILROAD PROPERTY WITHOUT SUCH CONTRACTOR AGENTS HAVING AN EXHIBIT C OR EXHIBIT C-1 AGREEMENT EXECUTED IN THE FORM ATTACHED AS EXHIBITS HERETO SIGNED WITH THE RAILROAD, (III) THE SOLE ACTS OR OMISSIONS OF STATE, ITS, OFFICERS OR EMPLOYEES IN, ON, OR ABOUT THE CONSTRUCTION SITE, (V) STATE'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO STATE PURSUANT TO ARTICLE II OF THIS AGREEMENT, (VI) ANY RIGHTS OR INTERESTS GRANTED TO STATE PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VII) STATE'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY**

STATE, OR (VIII) AN INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF STATE, ITS OFFICERS OR EMPLOYEES BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

ARTICLE IV – JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this AGREEMENT will be performed in a good and workmanlike manner and each portion will be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.
2. STATE will require its contractor(s) to reasonably adhere to the PROJECT's construction schedule for all PROJECT work. The parties hereto mutually agree that BNSF's failure to complete the RAILROAD WORK in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this AGREEMENT by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the RAILROAD WORK in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF-owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct, or indirect, consequences or costs resulting from any such reallocation will not constitute a breach of this AGREEMENT by BNSF. Nevertheless, BNSF shall endeavor to utilize all means at its disposal to comply with the original schedule.
3. BNSF will have the right to stop construction work on the PROJECT if any of the following events take place: (i) STATE (or any of its contractors) performs the PROJECT work in a manner contrary to the plans and specifications approved by BNSF; (ii) STATE (or any of its contractors), in BNSF's opinion, executes the PROJECT work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the PROJECT. (iv) STATE fails to pay BNSF for the Temporary Construction Easement and the Permanent Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by STATE or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until valid acceptable insurance has been delivered to and accepted by BNSF. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. Prior to ordering the stoppage of work BNSF shall communicate such deficiencies to the STATE's Engineer and attempt to seek corrections to such deficiencies. In the event that BNSF desires to stop

construction work on the PROJECT, BNSF agrees to notify the STATE's Engineer in writing.

4. STATE shall have the right to request that any BNSF Contractor or any employee of a BNSF Contractor who performs work within STATE right of way and which affects STATE's operations or facilities, be removed from STATE right of way for incompetence, neglect of duty, unsafe conduct or misconduct. In the event BNSF or its Contractor elects not to honor such request, STATE may stop the work within its right of way until the matter has been fully resolved to STATE's satisfaction. Before such action is taken the matter will be attempted to be resolved through the STATE's Engineer if the problem occurs during the initial construction or through the District Permits Supervisor if the problem occurs during a subsequent maintenance effort. STATE shall make the final determination. If the termination of RAILROAD WORK should result in delay claims by ADOT's Contractor, these costs shall be passed to BNSF for payment. For all RAILROAD WORK or subsequent maintenance work conducted by BNSF within STATE right of way BNSF shall acquire a permit for such activity from the applicable STATE District Permits Office. BNSF shall meet and comply with all provisions of said permit.
5. STATE will supervise and inspect the operations of all STATE contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this AGREEMENT and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by STATE personnel at any time during construction of the PROJECT, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the PROJECT will not proceed until STATE corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify the STATE's Engineer for appropriate corrective action.
6. Pursuant to this section and Article II, Section 3 herein, STATE will, out of funds made available to it for the construction of the PROJECT, reimburse BNSF in full for the actual costs of all work performed by BNSF under this AGREEMENT.
7. All expenses detailed in statements sent to STATE pursuant to Article II, Section 3 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this AGREEMENT by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the PROJECT even though such work may have preceded the date of this AGREEMENT and are included in the overhead rates of BNSF.
8. For projects that are funded by the American Recovery and Reinvestment act (ARRA), STATE and BNSF agree as follows:
BNSF and State agree that all applicable terms of ARRA funding shall be complied with by the party responsible therefore under ARRA; e.g., BNSF shall provide information to STATE including but not limited to labor that is used on the PROJECT. This information will include a summary of personnel, hours, dates and type of work performed on the PROJECT. STATE or its CONTRACTOR will

use this information to make all applicable reports, including but, not limited to the Federal Highway Administration on the number of jobs created and/or saved as part of the PROJECT.

9. The parties mutually agree that no construction activities for the PROJECT, nor future maintenance of the at grade-crossing within twenty-five (25) feet of BNSF's railway once completed, that by mutual agreement of the parties have the potential to impact BNSF facilities and operations within BNSF's right-of-way, will be permitted during the fourth quarter of each calendar year. EMERGENCY WORK will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: (800-832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

10. In addition to the terms and conditions set forth elsewhere in this AGREEMENT, BNSF and STATE agree to the following terms upon completion of construction of the PROJECT:

- (a) Before entering upon BNSF's right-of-way for maintenance purposes, by STATE personnel, STATE shall notify BNSF's Road master. Prior written authorization by BNSF's Manager Public Projects will be required for entry into the BNSF right of way during the fourth quarter of each calendar year. STATE is not obligated to execute BNSF's Exhibit C and Exhibit C-1. STATE will abide by the flagging safety requirements set forth in Exhibit C. If work is contracted, STATE will require its prime contractor(s) to comply with the obligations in favor of BNSF set forth in Exhibit C and Exhibit C-1, as may be revised from time to time.
- (b) It is expressly understood by STATE and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (c) If the State performs alterations or modifications to the at-grade crossing within twenty-five (25) feet of BNSF's railway then without the use of a contractor the States self insurance shall be accepted and evidenced on a certificate of insurance with the following limits:

Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations
- The coverage shall be primary under the limitations of ARS 41-621 and non-contributing with respect to any insurance

Business Automobile Coverage. This Coverage shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired
- The coverage shall be primary under the limitations of ARS 41-621 and non-contributing with respect to any insurance

Workers Compensation and Employers Liability Coverage including coverage for, but not limited to:

- State's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

The State is allowed to self-insure part or all of the insurance requirements without the prior written consent of Railroad. Any deductible, self-insured retention or other financial responsible for claims shall be covered directly by the state in lieu of insurance.

- (d) That this crossing will be transferred back to Maricopa County at a later date and that a separate agreement will be executed between BNSF, STATE and Maricopa County to transfer ownership, maintenance and easement from STATE to Maricopa County.

11. STATE hereby grants to BNSF, at no cost or expense to BNSF, the right to retain an existing dedicated right of access from STATE's property to BNSF tracks for maintenance purposes.
12. BNSF may, at its expense, make future changes or additions to the railroad components of the STRUCTURE if necessary or desirable, in BNSF's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the highway components of the STRUCTURE. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the highway components of the STRUCTURE to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the STRUCTURE, will be divided between BNSF and STATE in such shares as may be mutually agreed to by the parties hereto, subject to Arizona State Transportation Board approval. Before making any such changes, alterations or reconstruction of the highway facilities that will effect the STATE, BNSF shall provide to the STATE copies of the plans and specifications and receive the STATE's written approval prior to commencing work. BNSF is not required to receive written approval from the STATE prior to performing routine maintenance on non-STATE components.

13. STATE may, at STATE's sole expense, alter or reconstruct the highway components of the crossing if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction will not encroach further upon the easement limits previously granted to State by BNSF, without obtaining BNSF's prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement.
14. The covenants and provisions of this AGREEMENT are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.
15. In the event construction of the PROJECT does not commence within two (2) years of the Effective Date, this AGREEMENT will become null and void. All monies paid to BNSF by STATE for easements/licenses or other fees shall be returned to STATE.
16. BNSF's Manager, Public Projects will be given a notice to proceed when the Opinion and Order has returned from the Arizona Corporation Commission to the STATE. Construction of the PROJECT, on BNSF right-of-way, shall not be commenced until STATE'S contractor shall have given not less than thirty (30) working days prior written notice to BNSF's Manager Public Projects, making reference to BNSF's File Number 025399X which notice shall state the time that operations for construction of the Project, on BNSF right-of-way, shall commence.
17. STATE approval is required for any invoice total which exceeds the cost estimate set forth in Exhibit D plus any approved changes by more than ten percent (10%). Invoices which exceed the original or revised estimated cost by more than ten percent (10%) without prior written approval shall be returned to BNSF pending resolution.
18. If STATE, due to an audit of BNSF's billing sent to STATE has any audit exceptions, STATE and BNSF shall discuss the audit exceptions and agree upon the amount of billing to STATE that is the subject matter of the audit exceptions. If, when doing such review, it is determined by STATE and BNSF that BNSF is to reimburse STATE for any payment already made by STATE to BNSF, BNSF shall make such reimbursement within ninety (90) days after STATE and BNSF have made such determination. Likewise, if it is determined by STATE and BNSF that STATE needs to make any additional payment to BNSF, STATE shall make such additional payment within ninety (90) days after STATE and BNSF have made such determination. If any audit exception(s) cannot be settled by STATE and BNSF through their discussions, the audit exception(s) shall be settled through compromise, arbitration or adjudication as provided in this AGREEMENT
19. This AGREEMENT is subject to the provisions of Chapter 1 of Title 35, Arizona Revised Statutes.

20. BNSF shall comply with all applicable provisions of Executive Order 75-5 and 99-4, "Non-Discrimination in Employment by Government Contractors and Subcontractors".
21. All parties hereby are put on notice that this AGREEMENT is subject to cancellation by the Governor pursuant to A.R.S. § 38-511.
22. In accordance with A.R.S. § 35-214, all books, accounts, reports, files and other records relating to this AGREEMENT shall be subject at reasonable times to inspection and audit by STATE for five (5) years after the receipt of final payment. At STATE's discretion said inspection and audit may be held at BNSF's office during normal business hours. STATE shall conduct its inspection and audit at its expense.
23. This AGREEMENT, including any schedules, exhibits or attachments hereto, constitutes the entire AGREEMENT between the parties, and no understanding or obligation not expressly set forth herein shall be binding upon them. No modification, amendment or alteration of this AGREEMENT shall be valid unless it is in writing and signed by both parties.
24. This AGREEMENT shall be governed by the laws of the State of Arizona.
25. The waiver by either party of any breach or failure to provide full performance under any of the terms or conditions of this AGREEMENT shall not be construed as a waiver of any other term or condition, or of any subsequent breach of the same or any other term or condition.
26. Any notice provided for or concerning this AGREEMENT shall be in writing and be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:
BNSF's Manager Public Projects
740 East Carnegie Drive
San Bernardino, CA 92408

State of Arizona
Arizona Department of Transportation
Utility & Railroad Section
Attn: Railroad Liaison
205 South 17th Avenue – Mail Drop 618E
Phoenix, Arizona 85007

27. STATE'S PROJECT plans and specifications for TRACS No. 060 MA 139 H6866 01C are incorporated by reference only.
28. Neither termination nor expiration of this AGREEMENT will release either party from any liability or obligation under this AGREEMENT, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

29. To the maximum extent possible, each provision of this AGREEMENT will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this AGREEMENT is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.
30. This AGREEMENT (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete AGREEMENT between BNSF and STATE with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

IN WITNESS WHEREOF, STATE has caused this AGREEMENT to be executed and attested by its duly qualified and authorized officials, and BNSF has executed this AGREEMENT, both as of the day and year first above written.

STATE OF ARIZONA

JOHN HALIKOWSKI, DIRECTOR

By: Marcel Benberou Date: 07/13/2010

Printed Name: MARCEL BENBEROU

Utility and Railroad Engineering Section

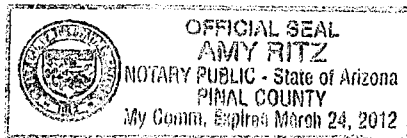
ACKNOWLEDGMENT BY STATE

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 13th day of July, 20 10, by Marcel Benberou the Manager of the Utility & Railroad Engineering Section, Arizona Department of Transportation.

My Commission Expires: March 24, 2012

Amy Ritz
Notary Public



BNSF RAILWAY COMPANY

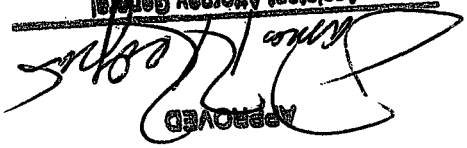
By: [Signature]

Date: 7/15/2010

Printed Name: Melvin Thomas

Title: Mgr Public Projects

[Faint, illegible stamp or text]

APPROVED

Assistant Attorney General
Attorney for Department
of Transportation
Date 2/12/10

ACKNOWLEDGMENT BY BNSF

STATE OF Arizona)
) ss
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 15th day of July, 2010, by Melvin Thomas, the Manager, Public Projects on behalf of Burlington Northern Santa Fe, a Delaware corporation.

My Commission Expires:
March 24, 2012

Amy Ritz
Notary Public

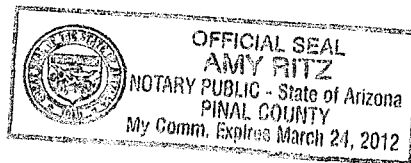


Exhibit B

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that **BNSF RAILWAY COMPANY**, (formerly known as The Burlington Northern and Santa Fe Railway Company and formerly known as Burlington Northern Railroad Company) a Delaware corporation, whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830, Grantor, for Two Thousand eight hundred six and 40/100 Dollars (**\$2,806.40**) to it paid by Arizona Department of Transportation , A Political Subdivision , Grantee, and the promises of the Grantee hereinafter specified, does hereby remise, release and quitclaim unto the Grantee, subject to the terms and conditions hereinafter set forth, an **EASEMENT** for the purpose of constructing, maintaining and operating an at-grade crossing and for no other purpose, located at Railroad Mile Post 176.85 , hereinafter called Crossing, over, upon and across the premises, situated in County of Maricopa, State of Arizona, being more particularly described on Exhibit "B-3 (Parcel 6)", attached hereto and by this reference made a part hereof.

RESERVING, however, unto the Grantor, its successors and assigns, the right to construct, place, operate, maintain, alter, repair, replace, renew, improve and remove communication lines above, below and on the surface of the premises, including, without limitation, transmission by conduit, fiber optics, cable, wire or other means of electricity, voice data, video, digitized information, or other materials or information, pipelines, utility lines, track and facilities including the right of ingress and egress in any such manner as does not unreasonably interfere with Grantee's use of the premises for said Structure, and further reserving unto Grantor, its successors and assigns, all right and privilege of ingress and egress to said premises as Grantor, its successors and assigns may require to investigate and remediate environmental contamination and hazards, and further reserving the right and privilege to use said land for any and all purposes not inconsistent with the use thereof for said Structure.

The foregoing easement is made subject to and upon the following express conditions:

1. To existing interests in the above-described premises to whomsoever belonging and of whatsoever nature and any and all extensions and renewals thereof, including but not limited to underground pipe line or lines, or any type of wire line or lines, if any.
2. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of said Structure shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the

premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing.

3. The Grantee shall bear the cost of removal, relocation or reconstruction of any and all right of way fences, telephone or telegraph poles, or other facilities, the removal, relocation or reconstruction of which may be made necessary by reason of the use of said premises for said Structure purposes.
4. The Grantee shall, at its own cost and expense, make adjustment with industries or other lessees of Grantor for buildings or improvements that may have to be relocated, reconstructed or destroyed by reason of the construction and maintenance of said Structure on said premises.
5. If during the construction or subsequent maintenance of said Structure, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Grantee shall indemnify, protect and defend the Grantor from any and all liability, claims or demands, if any, which arise as a result of exposure and/or removal of said contaminated soils or materials. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.
6. Grantor and Grantee have entered into that certain Crossing Agreement dated as of _____ concerning the Premises (the "Crossing Agreement"). The terms of the Overpass Agreement are incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the Overpass Agreement is, for whatever reason, no longer in effect.
7. The Grantee or its contractor(s) shall telephone Grantor's Communication Network Control Center at **(800) 533-2891** (a 24 hour number) to determine if fiber optic cable is buried anywhere on the premises; and if so, the Grantee or its contractor(s) will contact the Telecommunications Company(ies) involved, and make arrangements with the Telecommunications Company(ies) for protection of the fiber optic cable prior to beginning any work on the premises.
8. If said described premises, or any part thereof, shall for a period of two years cease to be used by said Grantee, or by the public, for the purpose, as aforesaid, or should they be converted to any other use whatsoever, , then and in any such event, all the right, title, interest, benefits and enjoyment of said Grantee, or of the public, in and to said premises, for any purposes whatsoever, shall immediately cease and the said Grantor, its successors and assigns, may, at its or their option, re-enter, retake and hold said described lands and premises as of the present estate of said Grantor without compensation to said Grantee, the public, or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of, or damage

to any premises or the improvements thereon abutting on said easement area or any part thereof.

9. The Grantor does not warrant its title to said premises nor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interest of others, including the tenants and licensees of the Grantor.
10. This easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for public use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

IN WITNESS WHEREOF, the said **BNSF RAILWAY COMPANY** has caused this instrument to be signed by its authorized officer, and the corporate seal affixed on the _____ day of _____, 20____.

BNSF RAILWAY COMPANY

By: _____

General Director-
Land Revenue Management

ATTEST:

By: _____

Assistant Secretary

STATE OF TEXAS)

) ss.

COUNTY OF TARRANT)

I, _____, a Notary Public in and for said County and State, do hereby certify that _____, General Director-Land Revenue Management, of BNSF Railway Company, and _____, Assistant Secretary of said BNSF Railway Company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, and to me personally known to be respectively the General Director-Land Revenue Management and Assistant Secretary of said corporation, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of said corporation, being thereunto duly authorized for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____,
20__.

Notary Public

My commission expires: _____

EXHIBIT "B-1"

Memorandum of Easement

THIS MEMORANDUM OF EASEMENT is hereby executed this ____ day of _____, 20____, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and Arizona Department of Transportation, a Political Subdivision ("**Grantee**"), whose address for purposes of this instrument is 205 S 17th Avenue Phoenix Arizona 85008, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Maricopa County, Arizona as described on **Exhibit " B "** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____ (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

[Signature page follows]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

_____,

By: _____
Name: _____
Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20____, by
_____(name) as _____(title) of BNSF RAILWAY
COMPANY, a Delaware corporation.

Notary Public

(Seal)

My appointment expires: _____

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20____, by
_____(name) as _____(title) of
_____, a _____.

Notary Public

(Seal)

My appointment expires: _____

Commencing at an aluminum cap stamped "RLS 21080" marking the East quarter corner of said Section 18, being North 00°25'52" East 2623.26 feet from a MCDOT brass cap marking the Southeast corner of said Section 18;

thence along the East line of said Section 18 North 00°26'47" East 305.57 feet to said existing right of way line common to US Highway 60 and B.N.S.F. Railroad;

thence along said existing right of way line common to US Highway 60 and B.N.S.F. Railroad North 70°42'50" West 102.68 feet to the POINT OF BEGINNING on the existing westerly right of way line of Del Webb Boulevard;

thence continuing along said existing right of way line of Del Webb Boulevard North 70°42'50" West 28.97 feet;

thence North 66°48'44" East 48.13 feet;

thence South 70°42'50" East 16.84 feet to said existing westerly right of way line of Del Webb Boulevard;

thence along said existing right of way line of Del Webb Boulevard South 55°00'47" West 40.03 feet to the POINT OF BEGINNING.

Parcel No. 6:

That portion of said existing railroad right of way of the BNSF Railway Company in the Southwest quarter (SW¼) of Section 17, Township 3 North, Range 1 East, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

Commencing at an aluminum cap stamped 'RLS 21080' marking the Center quarter corner of said Section 17, being North 00°26'17" East 2625.90 feet from a MC brass cap marking the South quarter corner of said Section 17;

thence along the North-South mid section line of said Section 17 South 00°26'17" West 596.31 feet to said existing right of way line common to US Highway 60 and B.N.S.F. Railroad;

thence along said existing right of way line common to US Highway 60 and B.N.S.F. Railroad North 70°42'50" West 36.26 feet;

(continued)

EXHIBIT B-2 PAGE 1 OF 2
PARCEL 6
AGREEMENT 3115-08-BNSF
DOT # 025 399 X
IN YOUNGTOWN, ARIZONA

thence continuing along said existing right of way line common to US Highway 60 and B.N.S.F. Railroad, along a curve to the Left, having a radius of 34,410.47 feet, a length of 41.77 feet to the POINT OF BEGINNING on the existing westerly right of way line of 103rd Avenue;

thence continuing along said existing right of way line common to US Highway 60 and B.N.S.F. Railroad, from a Local Tangent Bearing of North 70°47'01" West, along a curve to the Left, having a radius of 34,410.47 feet, a length of 26.59 feet;

thence North 72°21'29" East 32.53 feet;

thence South 70°46'34" East 10.17 feet to said existing westerly right of way line of 103rd Avenue;

thence along said existing westerly right of way line of 103rd Avenue South 45°26'17" West 21.74 feet to the POINT OF BEGINNING.

EXHIBIT B-2 PAGE 2 OF 2
PARCEL 6
AGREEMENT 3115-08-BNSF
DOT # 025 399 X
IN YOUNGTOWN, ARIZONA

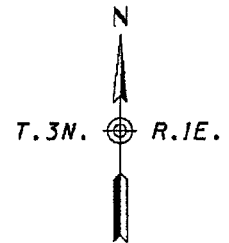
PARCEL EXHIBIT SHEET TO OBTAIN BNSF PERMANENT RIGHT OF ENTRY

| TRACS NO : 060 MA 139 H6866 01R FED ID : UNASSIGNED | PARCEL NUMBER | TOTAL AREA | AREA REQUIRED | | | REMAINDER | |
|--|------------------|---------------|--------------------------------------|------------------------------------|------------------|-----------|-------|
| | | | GROSS (INCLUDING EXISTING R/W) | NET (EXCLUDING EXISTING R/W) | NEW EASEMENTS | LEFT | RIGHT |
| | 7-10820 | | | 358 | | | |

Note: For R/W Information not shown on this exhibit, see ADOT R/W Plans Project D-07-T-987

ALL AREAS ARE IN SQUARE FEET UNLESS OTHERWISE NOTED

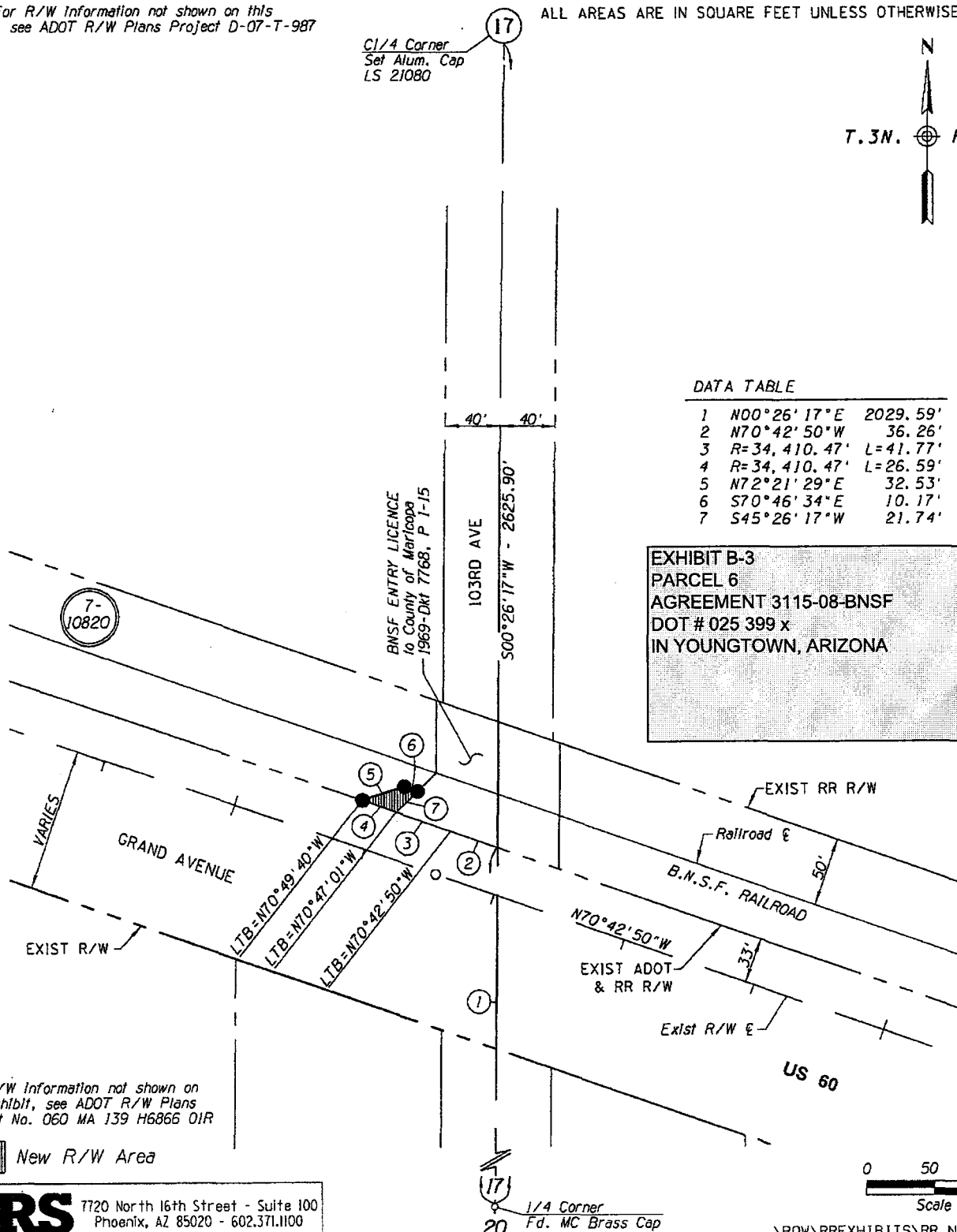
C1/4 Corner
Set Alum. Cap
LS 21080



DATA TABLE

| | | |
|---|--------------|----------|
| 1 | N00°26'17"E | 2029.59' |
| 2 | N70°42'50"W | 36.26' |
| 3 | R=34,410.47' | L=41.77' |
| 4 | R=34,410.47' | L=26.59' |
| 5 | N72°21'29"E | 32.53' |
| 6 | S70°46'34"E | 10.17' |
| 7 | S45°26'17"W | 21.74' |

EXHIBIT B-3
PARCEL 6
AGREEMENT 3115-08-BNSF
DOT # 025 399 x
IN YOUNGTOWN, ARIZONA

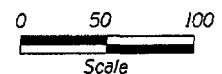


Note:
For R/W Information not shown on
this exhibit, see ADOT R/W Plans
Project No. 060 MA 139 H6866 01R

New R/W Area

URS 7720 North 16th Street - Suite 100
Phoenix, AZ 85020 - 602.371.1100

1/4 Corner
Fd. MC Brass Cap



...\\ROW\REXHIBITS\RR_NRW6.DGN

BNSF PARCEL EXHIBIT NO.6

5/1/2009
6:14:53 AM

Sheet 6 of 6

EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of US 60/ Grand Avenue widening from SR 303 to 99th Avenue (060 MA 139 H6866 01C); specifically 103rd Avenue at grade crossing AAR/DOT # 025 399 X.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify the Arizona DOT and Railway's Manager Public Projects, telephone number (909)386-4472, at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway, must refer to Railroad's file 025399X.

- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Superintendent at (602) 382-5828 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

- **1.03.04** Upon completion of construction, the following clearances shall be maintained: [Note to Drafter: The vertical clearance should mirror the final negotiated design clearance]
 - 25' Horizontally from centerline of nearest track
 - 23'-3 1/2" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the Arizona DOT and must not be undertaken until approved in writing by the Railway, and until the Arizona DOT has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by the Arizona DOT for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services on railroad property under this Agreement.

The background screening shall at a minimum meet the criteria defined by the e-RAILSAFE program outlined at <http://www.e-railsafe.com> in addition to any other applicable regulatory requirements. The e-RAILSAFE program uses rail industry background screening standards.

Contractor shall obtain consent from all employees screened in compliance with the e-RAILSAFE program criteria to release completed background information to BNSF. Contractor shall be subject to periodic audit to ensure compliance.

Contractor shall not permit any of its employees, subcontractors or agents to perform services on property hereunder who are not approved under e-RAILSAFE program standards. Railroad shall have the right to deny entry onto its premises to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth for the e-RAILSAFE program or who pose a threat, in Railroad's reasonable opinion, to the safety or security of Railroad's operations.

Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster (602) 382-5803 a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
 - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 - **1.05.03c** The cost of flagger services provided by the Railway will be borne by the Arizona DOT. The

estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

- **1.05.03d** The average train traffic on this route is _____ freight trains per 24-hour period at a timetable speed of _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes,

above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILROAD'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative (505-767-6826). All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must

be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather _____
(if non-Railway location)
5. Social Security # _____
6. Name (last, first, mi) _____
7. Address: Street: _____ City: _____ St. _____ Zip: _____
8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.): _____
12. Treatment:
? First Aid Only
? Required Medical Treatment
? Other Medical Treatment
13. Dr. Name _____ 30. Date: _____
14. Dr. Address:
Street: _____ City: _____ St: _____ Zip: _____
15. Hospital Name: _____
16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____
17. Diagnosis: _____

**FAX TO
RAILWAY AT (817) 352-7595
AND COPY TO
RAILWAY ROADMASTER FAX**

EXHIBIT "C-1"

**Agreement
Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR**

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: 025399X

Agency Project: US 60/ Grand Avenue widening from SR 303 to 99th Avenue (060 MA 139 H6866 01C);
specifically at US 60 and 103rd Avenue at grade crossing AAR/DOT # 025 399 X

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 20__, with Arizona DOT for the performance of certain work in connection with the following project Tracs 060 MA 139 H6866 01C. Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for Arizona DOT (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner

connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railroad to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILROAD FOR RAILROAD'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to **Railroad** payments related to the Federal Employers Liability Act or a **Railroad** Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage

- ◆ Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Arizona's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Agreement

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railroad** for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by **Railroad**. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and **Railroad** must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming **Railroad** as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of **Railroad**. If granted by **Railroad**, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this **Agreement**, be covered by contractor's insurance will be covered as if contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

Ebix BPO

PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-766-2299

Any insurance policy must be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this **Agreement** has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this **Agreement**. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, **Railroad** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming **Railroad** as an additional insured, and requiring that the subcontractor release, defend and indemnify **Railroad** to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify **Railroad** herein.

Failure to provide evidence as required by this section will entitle, but not require, **Railroad** to terminate this **Agreement** immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this **Agreement**. Damages recoverable by **Railroad** will not be limited by the amount of the required insurance coverage.

For purposes of this section, **Railroad** means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, , including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these

arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay for certain trains may be \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Engineering representative (505-767-6826) four (4) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Manager Public Projects

Contact Person: _____
Address: _____

Accepted and effective this ____ day of 20__.

City: _____ State: ____ Zip: ____
Fax: _____
Phone: _____
E-mail: _____

Exhibit D

TRACS 060 MA 139 H6866 01C
Project ARRA-060-B(201)A
Agreement 3015-08-BNSF
BNSF LS 7208, Rail Mile 176.85 Phoenix Subdivision
Signal work at US 60/103rd Avenue
DOT # 025 399 X

Summary of Costs to be paid by STATE thru this agreement
(RR Flagging is paid thru agreement 3001-09-BNSF)
(There is no Surface Work)

| | |
|----------------------|---------------------|
| Railroad Signal Work | |
| Labor | \$ 87,486.00 |
| Material | \$ 76,683.00 |
| Administration | \$ 1,991.00 |
| Other | <u>\$ 34,841.00</u> |
| Signal Subtotal | \$201,001.00 |

| | |
|----------------------------------|--------------------|
| Permanent and Temporary Easement | |
| Agreed Cost | \$ 806.40 |
| Application Fee | <u>\$ 2,000.00</u> |
| Total Easement Cost | \$ 2806.40 |

Total Cost for Agreement 3115-08-BNSF \$ 203,807.40

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
STATE OF ARIZONA

LOCATION SUN CITY

DETAILS OF ESTIMATE

PLAN ITEM : PSI025399X

VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

REVISED TO NEW PRICING LIST 09/04/03 (THERE WAS NO APPROVED MATERIAL LIST AT THIS TIME.)
REUSE EXISTING PMD-2, FLASHER WITH GATES AND INSTALL A RETIRED BUNGALOW FROM AN ADJ. XING AND INSTALL (2) NEW
CANTILEVERS AT 103RD AVENUE STREET IN SUN CITY, AZ. L/S 7208, MP 176.85, SOUTHWEST DIV., PHOENIX SUBDIV., DOT # 025399X
MONTHLY POWER UTILITY COST CENTER:
THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSE ONLY.
CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.
THIS ESTIMATE GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR MATERIAL, LABOR, AND
OVERHEADS.

THE STATE OF ARIZONA IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY

THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS, DETAILED AND ACCURATE MATERIAL LISTS WILL BE
FURNISHED WHEN ENGINEERING IS COMPLETED.

***** SIGNAL WORK ONLY *****

REVISED TO NEW PRICING LIST 09/04/03

| DESCRIPTION | QUANTITY U/M | COST | TOTAL \$ |
|--------------------------------|--------------|--------|----------|
| ***** LABOR ***** | | | |
| SIGNAL FIELD LABOR - CAP | 1040.0 MH | 27,103 | |
| PAYROLL ASSOCIATED COSTS | | 18,646 | |
| EQUIPMENT EXPENSES | | 8,401 | |
| DA LABOR OVERHEADS | | 29,000 | |
| INSURANCE EXPENSES | | 4,336 | |
| TOTAL LABOR COST | | 87,486 | 87,486 |
| ***** MATERIAL ***** | | | |
| BATTERY | 1.0 EA N | 5,088 | |
| BOX, PREEMPTION INTERFACE | 1.0 EA N | 271 | |
| BUNGALOW MATERIAL | 1.0 LS N | 3,764 | |
| CABLE | 1.0 EA N | 4,567 | |
| CANTILEVER COMPLETE | 2.0 EA N | 38,000 | |
| CHARGER | 1.0 LS N | 1,020 | |
| ELECTRICAL MTRL | 1.0 EA | 1,500 | |
| FIELD MATERIAL | 1.0 LS N | 3,182 | |
| LAMP RESISTOR | 1.0 EA N | 792 | |
| LED LIGHT ADJUSTMENT | 24.0 EA N | 5,376 | |
| LED LIGHT GATE KIT | 2.0 EA N | 762 | |
| LIGHT OUT DETECTOR | 1.0 EA N | 891 | |
| PREEMPTION MISC. MTRL. | 1.0 LS N | 250 | |
| RELAY, PREEMPT W/BASE | 1.0 EA N | 500 | |
| SHUNT, NBS | 2.0 EA N | 1,764 | |
| SIDELIGHT ASSY, 1-WAY, W/ CANT | 1.0 EA N | 915 | |
| TELLULAR DEVICE | 1.0 EA N | 2,500 | |
| MATERIAL HANDLING | | 75 | |
| USE TAX | | 4,763 | |
| OFFLINE TRANSPORTATION | | 703 | |
| TOTAL MATERIAL COST | | 76,683 | 76,683 |
| ***** OTHER ***** | | | |
| AC SERVICE | 1.0 EA N | 1,500 | |
| CONCRETE/FOUNDATION CANT. | 2.0 LS N | 3,000 | |
| CONTRACT ENGR. | 1.0 EA N | 6,000 | |
| CONTRACT SIGNS/CONES | 1.0 EA N | 3,000 | |
| DIRECTIONAL BORE | 1.0 EA N | 2,500 | |
| SURFACE ROCK | 30.0 CY N | 750 | |
| TOTAL OTHER ITEMS COST | | 16,750 | 16,750 |

EXHIBIT D-1
PAGE 1 OF 2
AGREEMENT
3115-08-BNSF
DOT # 025 399 X
IN YOUNGTOWN, AZ

PROJECT SUBTOTAL
CONTINGENCIES
BILL PREPARATION FEE

GROSS PROJECT COST
LESS COST PAID BY BNSF

TOTAL BILLABLE COST

180,919
18,091
1,991

201,001
0

201,001

EXHIBIT D-1 PAGE 1 OF 2
AGREEMENT 3115-08-BNSF
DOT # 025 399 X
IN YOUNGTOWN, ARIZONA

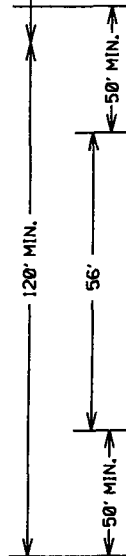
BNSF RAILWAY COMPANY

TO PHOENIX

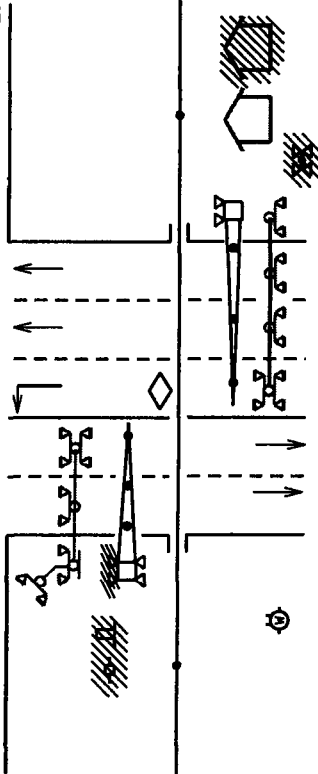
EASTWARD APPR. 2012'
49 MPH

TO WILLIAMS JCT

WESTWARD APPR. 2012'
49 MPH



US 60 / GRAND AVE.



103RD AVENUE
DOT # 025 399 X

INSTALL: CANTLEVERS & REUSE EXISTING GATES

CONTROL DEVICES: REUSE PMD-2

BOLO - IN

- OUT

SAL VAGE: NONE

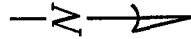


EXHIBIT D-2
AGREEMENT 3115-08-BNSF
DOT # 025 399 X
IN YOUNGTOWN, ARIZONA

INSTRUMENT HOUSE

- HOUSE
- BELL
- METER
- CROSSING CONTROL CONNECTIONS
- BIDIRECTIONAL CROSSING CONTROL
- UNIDIRECTIONAL CROSSING CONTROL
- COUPLER OR TERMINATION
- GUARD RAIL

Warning device placement:

Clearance to C.L. Track = Min. 12'

Edge of Road to C.L. Foundation:

- Min. 5'3" with curb.
- Min. 9'3" without curb.
- Max. 12'

House Clearance:

- 25' Min. to Near Rail
- 30' Min. to Edge of Road
- ALL LIGHTS TO BE LED

BNSF RAILWAY CO.

LOCATION: SUN CITY, AZ.

STREET: 103RD AVENUE

LS: 7208

M.P. 176.85

DOT # 025 399 X

DIVISION: SOUTHWEST

SUBDIVISION: PHOENIX

KANSAS CITY

NO SCALE

DATE: 02/02/09

FILE: 7208176 85.dgn